FILE COPY

SEP 23 1969

Office-Supreme Court
FILED
OCT 20 19

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 135.

FREDERICK WALZ,
Appellant,

v.

TAX COMMISSION OF THE CITY OF NEW YORK,
Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK.

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE
AND
BRIEF FOR MADALYN MURRAY O'HAIR and SOCIETY OF SEPARATIONISTS, INC. AS AMICI CURIAE.

MADALYN MURRAY O'HAIR
Attorney for O'Hair, Amicus Curiae, pro se.
P. O. Box 2117
Austin, Texas 78767

JAMES H. ANDERSON, JR.
Attorney for Society of Separationists, Inc., Amicus Curiae
2204 Eutaw Street
Baltimore, Maryland 21217

OLA BOSWELL
Vermont Avenue
ington, D.C. 20005

24 September 1969.

INDEX

Page

Motion for Leave to File Amicus Curiae iii
Appendix thereto iv

Amicus Curiae Brief 1

Questions Presented 1

Argument 1

Conclusion 77

Appendix 79

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

Madalyn Murray O'Hair and the Society of Separationists, Inc., hereby respectfully move for leave to file the accompanying brief amici curiae in this case in support of appellant as provided in Rule 42 of the Rules of this Court. Appellee has consented. (Appendix) Appellant, a recluse, has not given reply to requests, and it is not known if he has received them. (See memorandum in appendix from the United States Post Office.)

Madalyn Murray O'Hair is the founder and director of the Society of Separationists, Inc. She is the sole national spokesman for the nation's known six and one half million non-believers in religion and was the principle litigant in the case of Murray v. Comptroller of the Treasury, 241 Md. 383, cert. den. 385 U.S. 865 (1966) which was identical to the case at issue.

The Society of Separationists, Inc. is a Maryland corporation, headquartered in Austin, Texas, organized nationally, having an affiliation of thirty thousand families. Its president is Richard F. O'Hair.

The primary and corporate purpose of the Society of Separationists, Inc. is to advocate, labor for, and promote in all lawful ways, the complete separation of state and church, and inter alia to sustain and popularize a movement to tax the church, which the society apprehends should bear its fair share of the real estate tax burden.

The issue posed in this case is a primary raison d'etre of the corporation, responding to the concerns of its affiliates and the desires of the inarticulate and unorganized non-religious people of America. The Society of Separationists, Inc. has been very active in expressing and implementing considered presentations of the arguments in support of separation of church and state on university and college campuses, on television, radio and by

means of its own radio series and regular publications, as well as by litigation.

The function of this amicus curiae is to present additional information to the court, which has not been covered, *at all*, by the survey of the problem involved, to be used as source reference by the court and both litigants.

The attached brief is submitted in the hope that it will assist the court in its deliberations.

For the foregoing reasons, the amici curiae respectfully request that this motion be granted.

Respectfully submitted,

MADALYN MURRAY O'HAIR
P. O. Box 2117
Austin, Texas 78767
Attorney for Amicus Curiae,
O'Hair, pro se.

JAMES H. ANDERSON, JR.
2204 Eutaw Street
Baltimore, Maryland 21217
Attorney for Amicus Curiae,
Society of Separationists, Inc.

LOLA BOSWELL
1010 Vermont Avenue
Washinton, D.C. 20005

24 September 1969.

Certificate of Service:

A copy of the foregoing Motion, together with brief amici curiae attached were served on the appellant by mailing a copy to the appellant, Frederick Walz to 60 East 42nd Street, New York, New York, 10017, and a copy of the foregoing Motion, together with brief amici curiae attached were served on the appellee by mailing a copy to the appellee's attorney, J. Lee Rankin, Corporation Counsel, Municipal Building, New York, New York, 10007, this 20th day of September 1969.

MADALYN MURRAY O'HAIR
pro se for Amicus Curiae

LOLA BOSWELL
)10 Vermont Avenue
shington, D.C. 20005

JAMES H. ANDERSON, JR.
Attorney for Amicus Curiae,
Society of Separationists, Inc.

APPENDIX

to Motion for Leave to File Amici Curiae.

Letters requesting the consent of the appellant and the appellee for the filing of this brief amici curiae in support of the appellant were timely mailed by the amici curiae.

The attorney for the appellee, J. Lee Rankin, Corporation Counsel for the City of New York, Law Department, Municipal Building, New York, New York, 10007, experienced prompt delivery and made reply on August 18th, 1969, giving consent.

In respect to delivery of the request to appellee, Mr. Frederick Walz, 60 East 42nd Street, New York, New York, 10017, the United States Post Office, New York City, New York, failed to return POD Form 3849 "Notice of Mail Arrival or Attempted Delivery" although a fee was paid for this.

An inquiry and search was instituted by the Claims, Inquiries, Permits, section of the United States Post Office, Austin, Texas, and on September 12, 1969, a photostatic copy of the delivery memorandum, on file in New York, was mailed by the Austin, Texas, Post Office to the amici curiae. This is here reproduced and indicates that a person, one "Carlson" signed for this consent request at the late date of 15 August 1969 and it is not known if the request for consent was ever indeed received by Mr. Walz, appellant, whom this brief supports.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968.

No. 135.

FREDERICK WALZ,

Appellant,

v.

TAX COMMISSION OF THE CITY OF NEW YORK,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF NEW YORK.

BRIEF AMICI CURIAE ON BEHALF OF MADALYN MURRAY O'HAIR AND SOCIETY OF SEPARATIONISTS, INC., URGING REVERSAL.

I

THE INTEREST OF THE AMICI CURIAE

The interest of the amici curiae is indicated in the motion for leave to file brief amici curiae, attached hereto, and made a part of this presentation.

ARGUMENT

Seventy four million persons in America are NOT church members. Over one hundred million Americans do not attend church.

Each year the religious community of the United States reports its 'membership,' which is carefully compiled in the *Yearbook of American Churches,*[1] published by the Office of Planning and Programing, National Council of Churches.[2] This is then analyzed and reported in the *Statistical Abstract of the United States,* issued yearly by the United States Department of Commerce, Bureau of Census.

The United States government makes no survey of religion, official or unofficial. Organized religion created a national furor when the last attempt at survey was proposed for the 1960 census.[3] The only nose count in respect to religious beliefs is that now undertaken by the National Council of Churches, and given quasi-official status by inclusion in the *Statistical Abstract of the United States.*

The Supervisor of the Statistical Information Division of the Bureau of Census, upon whom the responsibility for accuracy

---

1. Whitman, Lauris B., editor, *Yearbook of American Churches, 36th Issue, Annual Edition for 1968,* (New York, N.Y.: Council Press, 1969).

2. Lerner, William (prepared under direction of) *Statistical Abstract of The United States, 1968, 89th Annual Edition.* (Washington, D.C.: U.S. Government Printing Office, 1969).

3. Stokes, Anson Phelps and Pfeffer, Leo, *Church and State in the United States,* (New York: Harper and Row, 1950) pp 571-576.

of reported material falls, very carefully, each year, puts an explanatory note at the head of that section dealing with church membership claims of religious bodies, in America:

> ". . . not all groups follow same calendar year nor count membership in the same way; some groups give only approximate figures. Roman Catholics count all baptized persons, including infants; Jews regard as members all Jews in communities having congregations; Eastern Orthodox churches include all persons in their nationality or cultural groups . . . many Lutheran bodies and Protestant Episcopal Church now report all baptized persons . . .".[4]

Churches use actuary methods according to probabilities based on primary statistical records for estimates in respect to those persons who were once received into the church (baptism, as an example) but who never show up in a church again during their adult life. Life expectations of remaining in that faith give a hopeful rather than an accurate percentage of religious convictions of our population. Duplication is not taken into account although it is common knowledge that many persons switch church allegiances (notably at the time of marriage) and are then counted in one group as having been baptized there, and in another group as being a communicant, and perhaps in a third group as an actual attending member.

Turning to the *Yearbook of American Churches* for 1968, which is the last available, and verifying this with reporting in the current *Statistical Abstract of the United States* (1968), we find the following as authenticated:

(1) 321,070 churches in the United States, report
(2) 204,161 'pastors with charges,' and
(3) 123,826,000 'inclusive' members.[5] [6]

---

4. Lerner, p. 41.
5. Whitman, p. 193 ff.
6. Lerner, p. 41.

Of the 'inclusive' members (which number is obtained by the above indicated actuary method of counting) full, communicant or confirmed membership is shown at 47,372,058.[7] This figure is very small because the National Council of Churches can not verify the claims of two groups: the Roman Catholics and Jews, which figures are reported as "Not Available"[8] in other terms than 'inclusive.' In this group of 'inclusive' or claimed membership, these two religions report:

(1) Roman Catholics, 46,864,910[9]
(2) Jews, 5,725,000.[10]

Added to the above 'full, communicant or confirmed' members and accepted as such, this would still only indicate 100,961,968 actual members at best, in a population roughly twice that figure.

The problem in relation to Roman Catholic claims can be easily exampled. In the 1964 Official Catholic Directory (the last year available to this author) the New York archdiocese consisting of the boroughs of Manhattan, Bronx, and Richmond, and some territory across the Hudson in New Jersey, had a population of 4,980,000 of whom 1,782,630 or 35.8% were claimed as Roman Catholics. The report then continues that these were served by 402 parish churches and 602 'chapels'.[11] This is an average of 1,775 members active in each parish church or 'chapel', which figures test the credulity of any investigator.

The problem in relation to Jewish claims is evident. Every one in this ethnic group is counted as a member without reference to Synagogue commitment or attendance.[12]

---

7. Whitman, p. 193.

8. Whitman, p. 198, p. 200.

9. Whitman, p. 200.

10. Whitman, p. 198.

11. *Official Catholic Directory*, (P. J. Kenedy and Sons, New York, 1964).

12. Lerner, p. 41.

In this argument, we will deal with the 'optimum' figure of church claims, to wit: 123,826,000 'inclusive' members, even though it is obviously fallacious. We accept the figures for 'argument sake' since they have been given authenticity by their inclusion in the official governmental *Statistical Abstract of the United States.*

The total resident population of the United States, as of July 1, 1967 was 197,863,000.[13] (All figures here reported are as of that date.)

This leaves 74,037,000 persons who have elected, voluntarily, to remain outside of churches during any period of their lives.

The *Yearbook of American Churches, 1968* lists 40,967,000 in Sunday and Sabbath School enrollment[14] and *Statistical Abstract of the United States, 1968* clarifies this by noting that this figure includes pupils, officers and teachers also.[15] There are 70,775,000 persons under 18 years of age reported in the United States for this period.[16] A breakdown study reveals then, using only church provided statistics which are prima facie exaggerated, that in the United States, there may be:

'inclusive' church members		non-church persons
82,859,000		44,229,000
40,967,000	under 18	39,808,000

In March, 1957, the Bureau of Census, Department of Commerce, made an inquiry on religion asked of a national sample of individuals on a voluntary basis. Answers were channeled into five categories: (1) Catholic, (2) Jewish, (3) Protestant, (4) all others, and (5) none.[17] The result of this was

13. Lerner, p. 10.
14. Whitman, p. 193.
15. Lerner, p. 42, 43.
16. Lerner, p. 25.
17. Stokes, p. 574.

that 2.67% of the 1957 population, i.e., 3,195,000 persons reported no religion at all.[18] If it can be assumed that this percentage has held steady (any difference would be an increase) to the time here under study, based on that population, there are 6,512,942 persons who have no religion at all. These are scattered in the statistics of both church and non-church members since Atheist organization studies[19] show that persons having no religion tend to remain in the church structure as participating members for social and business reasons.

That the claims for 123,826,000[20] 'inclusive' members are specious is further evidenced by polls taken by the American Institute of Public Opinion[21] and reported by the National Council of Churches.[22] The results of the polls making inquiry as to church attendance is as follows:

Date	Per Cent of Adults Attending Church	Date	Per Cent of Adults Attending Church
1939	41	1958	49
1940	37	1959	47
1942	36	1960	47
1947	45	1961	47
1950	39	1962	46
1954	46	1963	46
1955	49	1964	45
1956	46	1965	44
1957	47	1966	44

18. Lerner, p. 41. Cited by Mr. Justice Clark, in *Abington School Dist. v. Schempp.* 374 U. S. 213.

19. *Survey, American Atheists,* Archives of Society of Separationists, Inc., Austin, Texas, 1963.

20. This figure includes 1,789,175 'inclusive' members of the Church of Jesus Christ of Latter Day Saints (popularly known as 'Mormons'), not reported by *Yearbook of American Churches.*

21. Princeton, New Jersey.

22. Whitman, p. 228.

There has been a decline since 1966.[23] There has not been a report of 50% attendance in all of the reported years. This would appear to affirm that over one hundred million Americans do not attend church.

Attorney Walz, appellant in this case, therefore, represents in his claim perhaps half of America since he states that he is a 'Christian' who does not attend church and can not be identified as belonging to any denomination.[24] However, he is most probably still counted in the 'inclusive' membership of the original church in which he had his baptism.

The case against church statistics has been succinctly put by one newsman reporting on the dissatisfaction of one young minister who quit his church:*

> "It had long troubled me that we listed 800 members and only half ever came to church even periodically," he said. "At least 100 'members' no longer even lived in the suburb. Why should we continue to carry this deadwood? It cluttered up the rolls, demeaned the image of the church . . ."

A survey of historical statistics indicates that non attendance at church, indeed non-membership in church, is a continuing American phenomenon. Since church leaders in the colonial period took their religion very seriously and we have a plethora of records in respect to their opinions, we are inclined to overestimate the church devotion of the majority of the population then, as we do now. Even the stringent laws of the colonial period could not coerce attendance or participation. The number of church members was almost everywhere very small. There were only 3,105 congregations of all churches at

---

23. *Reader's Digest Almanac and Yearbook, 1969* (Pleasantville, New York: The Reader's Digest Association, Inc., 1969) p. 409.

24. See Appellant's "Brief in Opposition to Motion to Dismiss Appeal," filed with the Supreme Court of the United States on June 12, 1969, in Walz v. Tax Commission of the City of New York, No. 135, October Term, 1968.

*Balk, Alfred, *The Religious Business*, Richmond, Virginia: The John Knox Press, 1968.

the close of the colonial period,[25] in a population of 2,781,000 in 1780. Even in New England, the most churched section of the thirteen colonies, there was not more than one church member to every eight persons in the total population.[26] Church affiliation at the founding of the republic was limited to four per cent of the population.[27]

A Federal law prescribed for the first time in 1850 that 'social statistics' be collected and one of the subjects under that category was 'religious organizations.'[28] The first efforts gave very inaccurate returns since each denomination was asked for the number of churches, church accommodations, and *the value of church property* (to be discussed later in this report). In the 1890 census expanded lists of items of information were requested of the religious institutions and in the years 1906, 1926 and 1936 serious efforts were made to gather complete information. These reveal:

Year	Total Population[29]	"Church Edifices"	'Inclusive Church Membership' given as a percentage of population.[30]
1780	2,781,000	3,105	4%
1785	3,600,000		
1850	23,191,876		16%
1860	31,443,321		23%
1870	39,818,449		18%
1880	50,155,783		20%
1890	62,947,714		22%

25. Sweet, William Warren, *The Story of Religion in America,* (New York, Harper & Brothers, 1930 IV, p. 5).

26. Pfeffer, Leo, *Church, State and Freedom,* (Boston, Mass., The Beacon Press, 1953) p. 85.

27. Moehlman, Conrad H., "In Defense of McCollum v. Board of Education," *American Bar Association Journal,* April 1952 (Vol. 39) p. 345.

28. Bureau of Census, Census of 1870.

29. Lerner, p. 5.

30. Reader's Digest Almanac and Yearbook, 1969, p. 409.

1900	75,994,575	36%
1906	199,831[31]	
1910	91,972,266	43%
1916	203,432[32]	
1920	105,710,620	43%
1926	210,924[33]	
1930	122,775,046	47%
1936	179,742[34]	
1940	131,669,275	48%

The entire judicial and legislative history of religion in the United States has been the struggle for disestablishment. As a minor but contributing factor to our colonization, there was first the flight of people from European state religions and the tragedy of the error of establishment immediately repeated on our shores. Except for a very few and scattered islands of partial enlightenment (Rhode Island being the best thereof), in every colony there was free use of government coercion to compel religious conformity and monetary support of the established state or colonial religion. A few samples suffice:

> The "Lawes Divine Moral and Martial" decreed by Governor Thomas Dale, (Vriginia) in 1612 provided a death penalty for speaking impiously of the Trinity, one of the Divine Persons, or against any known article of the Christian faith. A third offense of breaking the Sabbath was punishable by death. The third offense of 'cursing' was punishable by death.[35]

---

31. Bureau of Census Special Reports: Religious Bodies (Washington, D.C. U.S. Government Printing Office, 1906) Vol. 1, p. 33.

32. Bureau of Census Special Reports: Religious Bodies (Washington, D.C. U.S. Government Printing Office, 1916) Vol. 1, p. 42.

33. Bureau of Census Special Reports: Religious Bodies (Washington, D.C. U.S. Government Printing Office, 1926) Vol. 1, p. 20.

34. Bureau of Census Special Reports: Religious Bodies (Washington, D.C. U.S. Government Printing Office, 1936) Vol. 1, p. 24.

35. Cobb, Sanford H. The Rise of Religious Liberty in America, New York, The MacMillan Co., 1902, p. 78.

No Catholic was permitted to enter Massachusetts and in 1647 the General Court there decreed that any person not freeing himself of suspicion "shall be jailed, then banished. If taken a second time, he shall be put to death."[36]

In Maryland, the much publicized "Act of Toleration" of 1649 imposed the death penalty on any person blaspheming God, or denying Jesus Christ to be the Son of God, or denying the Holy Trinity.[37]

In Pennsylvania, the Great Law, enacted in 1682 required acknowledgement of "one God," profanity was penalized, Sunday observance was required, and neither Catholics or Jews enjoyed freedom to worship.[38]

In Rhode Island, the law enacted limited citizenship and eligibility to public office to Protestants and in 1762, the Superior Court of that colony refused the application of two Jews for citizenship.[39]

In New York in August 1700, a law was enacted to banish "any Jesuit, priest or other ecclesiastic ordained by the Pope."[40]

State enforced religious bigotry ran high until after the Massachusetts witch trials of 1692.[41] It did not disappear after this; indeed nine of the thirteen colonies still had established

---

36. Sweet, W. W., Religion in Colonial America, New York, Charles Scribner's Sons, 1942, p. 146.

37. Adler, Mortimer, J. ed., The Annals of America, Vol. 1, 1493-1754, Chicago, Illinois, William Benton, Publisher, 1968, p. 88.

38. Pfeffer, Leo, Church, State and Freedom, Boston, the Beacon Press, 1953, p. 79.

39. Blau, Joseph L. Cornerstones of Religious Freedom in America, Boston, Beacon Press, 1949, p. 43.

40. Myers, Gustav, History of Bigotry in the United States, New York, Random House, 1943, p. 94.

41. Cassels, Louis, "A Cherished National Myth – Separation of Church, State," a United Press release of August 31, 1968.

churches at the time of the Revolution, 1776 to 1784.[42] Although the national leaders then saw the compelling necessity of disestablishment for the federal government, the states did not see it necessary for themselves. By the time of the adoption of the First Amendment to the Constitution on December 15, 1789, four states still retained established churches. These were Massachusetts, Maryland, Connecticut and New Hampshire. Connecticut maintained an established church until 1818, New Hampshire until 1819 and Massachusetts kept on taxing its citizens for support of the Congregational clergy until 1833.[43]

When the First Amendment was added to the Constitution, it specifically forbade the Congress of the United States to make a law respecting an establishment of religion. This clause, however, applied only to the Federal government and not to the state governments, and, as indicated in the summary given by Mr. Chief Justice Waite in *Reynolds v. United States*,[44] and by Justice Black in *Everson v. Board of Education of Ewing Tp.*,[45] drew its content and meaning from the contest waged against the established Church of England (Episcopal Church) in Virginia.

The amendment was clearly not applicable to the states of the union. In 1833, the Supreme Court, in *Barron v. Baltimore*,[46] held that no part of the Bill of Rights restrained the states, and in *Permoli v. First Municipality of New Orleans*,[47]

---

42. The Church of England was the official church in six colonies, Virginia, Maryland, North Carolina, South Carolina, Georgia and New York. In three, Massachusetts, Connecticut and New Hampshire, the Congregational Church was supported in each town by taxation, and remained established as the official church. Beard, Charles and Beard, Mary, *New Basic History of the United States*, Garden City, New York, p. 76.

43. *Engel v. Vitale*, 82 S. Ct. 1261 (1962) at page 1265.

44. 98 U. S. 145 (1878).

45. 67 S. Ct. 504.

46. 7 Pet. 243 (1833).

47. 44 U. S. 589 (1845).

ruled specifically that "The Constitution makes no provision for protecting the citizens of the respective States in their religious liberties; this is left to the state constitutions and laws; nor is there any inhibition imposed by the constitution of the United States in this respect to the states."

This may well be explained by the attitude of the national leaders at that time in respect to the established state religions of the day, which were Christians. Our national leaders were for the most part Deists. (Deism: a movement or system of thought advocating natural religion based on human reason rather than revelation, emphasizing morality and in the 18th Century denying the interference of the creator with the laws of the universe.[48]) Included in their ranks were the first four presidents of the United States, George Washington, John Adams, Thomas Jefferson, Thomas Madison, Thomas Paine, Benjamin Franklin, George Mason, Ethan Allen. Thomas Paine's writings[49] on this matter were so widely known and accepted by the leaders of the revolutionary movement that they were cited in the arguments before the Supreme Court by Mr. Daniel Webster, counsel for the complainant-appellants in Vidal et al. v. Girard's Executors.[50]

Indeed a striking feature of the times was the evasion of the use of the word "Christian" in respect to the religion embodied in official national declarations. The Constitution of the United States does not contain one word of reference to this religion which was then the dominant one of each state of the union. Article II, Section 8[51] was written as an escape clause for those who did not care to be identified with the "oath" taking of Christianity. The Declaration of Independence refers in ordi-

48. *Webster's Seventh New Collegiate Dictionary*, G. & C. Merriam Co., Springfield, Massachusetts, 1963, p. 217.

49. The Age of Reason, published in 1792.

50. 43 U. S. (2 How.) 127 (1844).

51. "Before he enters on the Execution of his Office, (i.e. the President of the United States) he shall take the following Oath or affirmation: – "I do solemnly swear (or affirm) . . .

nary deistic manner to "Nature and Nature's God," "Creator," and "Divine Providence." Concentrated reading of any document of this era brings one to an immediate realization of to what extent the writers would go in order to avoid the mention of the term "Christian."

This culminated in the famous Treaty of Tripoli, concluded by the United States, with Tripoli on February 10, 1797. The treaty was ratified by the Senate in June of the same year. Article XI of the Treaty states:

> "As the government of the United States is not, in any sense, founded on the Christian religion; as it has in itself no character of enmity against the law, religion, or tranquility of Musselman; and as the States never have entered into any way or act of hostility against any Mohometan nation, it is declared by the parties that no pretext arising from religious opinion shall ever produce an interruption of harmony existing between the two countries."[52]

The same official statements about the relationship of Christianity to government and governmental policy were incorporated in separate treaties with Algiers and Tunis.[53]

This did not all go unnoticed by the Christian community. On October 27, 1789, the "First Presbytery Eastward in Massachusetts and New Hampshire" made a protest to George Washington because there was no "explicit acknowledgment of the only true God and Jesus Christ whom He has sent, somewhere in the Magna Charta of our country." In 1793, the year Philadelphia was stricken by the yellow fever, the Rev. John Mason preached a sermon in which he declared the plague was sent as a visitation from God (i.e. Christian God) because

---

52. Stokes, Anson Phelps, *Church and State in the United States, Vol. I*, Harper & Brothers, New York, 1950, p. 497.

53. 8 Stat. 226, see Hunter, Miller, *Treaties and Other International Acts of the United States of America, Vol. II.*, U.S. Government Printing Office, 1931, p. 365.

He was not recognized in the supreme law of the land. At this time the capital of the United States was situated in Philadelphia, Pennsylvania. In 1803, the Reverend Samuel B. Wylie, Doctor of Divinity of the University of Pennsylvania preached a sermon in which he said, "Did not the framers of this instrument in this . . . resemble the fool mentioned in Psalms 14:1-3, who said in his heart, 'There is no God'?" In 1811 Samuel Austin, Doctor of Divinity, afterwards president of the University of Vermont, preached a sermon in Worcester, Massachusetts, in which he said that lack of recognition of God was the "capital defect" in the Constitution, which "will issue inevitably in the destruction of the nation."[54]

After the death of George Washington a prayer was forged to have him utter the only reference to Jesus Christ in his writings. The original letter from which the prayer was manufactured is to be found in Washington's writings,[55] and the forgery persists most notably in display on a bronze tablet in St. Paul's Chapel in New York City.[56] It has been this important to the Christians of the nation to have at least the founding father squarely in the Christian, rather than the Deistic, ranks.

The Christian church embattled on the national level, held on in the states everywhere it could. As indicated, Connecticut's church did not yield its grip until the new constitution was adopted there in 1818. Massachusetts in a constitutional amendment finally separated church and state in 1833. In New York and New England states' assistance to churches in the form of land endowments persisted until about 1800. After churches were stripped of taxes from general funds the churches

---

54. O'Hair, Madalyn Murray, "The U.S. Congress and the Religionists," Austin, Texas, Society of Separationists, Inc., 1969.

55. Ford, W. C. ed., Washington's *Writings*, Vol. 10, p. 254-265, also see official government edition of Washington's *Writings*, edited by J. C. Fitzpatrick, Vol. 24, pages 483, 496.

56. O'Hair, Madalyn Murray, "Rewriting of History by Christians," Austin, Texas, Society of Separationists, Inc., 1969.

were still given power to themselves tax their adherents.[57] Disestablishment was only won by 1868, and only with separation of state and church came any real freedom of worship.

Even after the era of state churches finally came to a close, legislatures and courts continued to give favored treatment to the Christian religion as opposed to all other faiths. The most articulate promoters of the principle of disestablishment were found on the national level and the state governments and courts needed to be brought up to the level of sophistication in religious politics which was manifested at the national level.

The root of the argument in respect to the deference to the Christian religion in the law of the land came out in the disagreement of Mr. Justice Story and Thomas Jefferson. Mr. Story's remarks are quoted often, and tellingly, to give substance to the argument forwarded by the Christian community that the First Amendment must be read in the light of the prevailing practices among the states when the First Amendment was proposed and adopted, and that these practices were for encouragement of Christianity, monetarily and otherwise. The famous argument reads:

"Every American colony, from its foundation to the revolution, ... did openly, by the whole course of its laws and institutions, support and sustain in some form the Christian religion; and almost invariably gave a peculiar sanction to some of its fundamental doctrines. ... Probably at the time of the adoption of the Constitution, and of the amendment to it ... the general if not the universal sentiment in America was, that Christianity ought to receive encouragement from the state.... The real object of the amendment was not to countenance, much less to advance, Mohometanism, or Judaism, or infidelity, by prostrating Christianity, **but to exclude all rivalry among Christian sects,** (emphasis added) and to prevent any national

57. Paulsen, Monrad G., "Preferment of Religious Institutions in Tax and Labor Legislation" *Law and Contemporary Problems*, Vol. 14, No. 1, (Winter, 1949) pp 144-159.

ecclesiastical establishment which would give to a hierarchy the exclusive patronage of the national government."[58]

Story later reaffirmed this expression of opinion in the case of Vidal et al v. Girard, "It is also said, and truly, that the Christian religion is a part of the common law of Pennsylvania."[59]

Jefferson was incensed by the interpretation given by Story and wrote a memorandum strongly disputing the accuracy of the maxim that Christianity was a part of the common law. His study is a careful historical one.[60]

Later writing to John Cartwright, concerned with a book of Cartwright's he wrote in a letter dated June 5, 1824.

> "I was glad to find in your bock a formal contradiction, at length, of the judicial usurpation of legislative powers; for such the judges have usurped in their repeated decisions that Christianity is a part of the common law. The proof of the contrary, which you have adduced is incontrovertible; to wit, that the common law existed while the Anglo-Saxons were yet pagans, at a time when they had never yet heard the name of Christ pronounced, or knew that such a character had ever existed. (Then after summarizing his early memorandum and challenging the best-read lawyer to produce another script of authority for this judicial forgery, he concludes) What a conspiracy this, between Church and State!".[61]

Jefferson evaluated his best piece of work to be his Bill for Establishing Religious Freedom (introduced into the Virginia

---

58. Story, Joseph, *Commentaries on the Constitution of the United States*, Vol. III, Boston, Hillard, Gray, 1833, pp. 724-26.

59. 2 How. 127 (1844) at page 94.

60. Pfeffer, Leo, *Church, State and Freedom*, Boston, Beacon Press, 1953, p. 214; see also Howe, Mark De Wolfe, *Cases on Church and State in the United States*, Cambridge, Harvard University Press, p. 8-15.

61. *American State Papers on Freedom in Religion*, Washington, D.C. Religious Liberty Association, 1949, p. 652 ff.

Legislature in 1779[62]) and writing about that in his autobiography,[63] he said,

> "Where the preamble declares that coercion is a departure from the plan of the holy author of our religion, an amendment was proposed, by inserting the word Jesus Christ, so that it should read a departure from the plan of Jesus Christ, the holy author of our religion. The insertion was rejected by a great majority, in proof that they meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and Mohometan, the Hindoo, and infidel of every denomination."

It is not a well known fact that Jefferson was so critical of the religion of Christianity that he created his own Bible. He introduced it as "a wee-little book" and called it "The Philosophy of Jesus Christ" pruned of the impurities of established religion.

> "It is," he wrote, "a paradigma of his doctrines, made by cutting the texts out of the book and arranging them on the pages of a blank book, in a certain order . . ."

> "In extracting the pure principles which he taught, we should have to strip off the artificial vestments in which they have been muffled by priests, who have travestied them into various forms as instruments of riches and power for themselves."[64]

The results was an octavo of forty six pages of "pure and unsophisticated doctrines" and is currently available under the title of "The Jefferson Bible," see reference for publisher.

An 'established church' is a financed church. The struggle for disestablishment has always revolved around financial issues.

---

62. Swancara, Frank, Separation of Religion and Government, New York Truth Seeker Company, New York, 1950, p. 156.

63. *Writings of Jefferson*, (Ford ed.), Vol. I, p. 62.

64. Jefferson, Thomas, *The Jefferson Bible*, The Life and Morals of Jesus of Nazareth, New York, Clarkson Potter, Inc., 1964, see page 325 for quotations.

Justice Douglas in Abington School Dist. v. Schempp[65] in defining an establishment of religion notes that in each such case, "the church typically has a place in the state's budget." We need now, therefore, to look at the fight in respect to taxation of the churches, and it has continued without interruption for the life of our Republic.

The initial battle for disestablishment, particularly in Virginia, was fierce. In that state legislative acts in 1799 and 1802 provided for seizure of every type of tangible property held by the churches. The state took church buildings, grounds, glebes and other real estate, the bells from church towers, church furnishings, books, records of the parish, and even Communion silver, everything which had belonged to the "Established Church of Virginia" on July 5, 1776.[66] All properties were sold, and the money was to be used for public purpose, and religion was not "a public purpose."[67]

A primary principle of taxation was invested in corporate status in colonial days. Incorporation gave unusual rights, notably the power to tax and was remindful of the ecclesiastical corporations[68] such as had existed in England and around which the land and bitter strife of "Mortmain" raged. The strife to incorporate the Episcopal Church reached into the national level when James Madison, then President of the United States, returned to the House of Representatives a bill to incorporate the Protestant Episcopal Church in Alexandria, on February 21, 1811.[69] It is important enough to cite that Veto Message

---

65. 374 U. S. 203, at page 227.

66. Brydon, George M. *Virginia's Mother Church*, Virginia Historical Vol. II, 1947, Appendix, IX, pp. 639 ff.

67. Robertson, D. B., *Should Churches be Taxed?* The Westminster Press, Philadelphia, Pennsylvania, p. 56.

68. Ibid, p. 60.

69. Padover, Saul K. Padover, ed. *The Forging of American Federalism: Selected Writings of James Madison* (Harper Torchbooks, Harper & Row, Publishers, Inc. 1966) p. 307.

1. . . . The bill exceeds the rightful authority to which governments are limited by the essential distinction between civil and religious function.

2. It violates in particular the article of the Constitution of the United States which declares that "Congress shall make no law respecting a religious establishment."

3. The bill enacts into and establishes by law sundry rules and proceedings relative purely to the organization and policy of the church incorporated. . . .

4. Because the bill vests in the said incorporated church an authority to provide for the support of the poor and the education of poor children of the same, an authority which, being altogether superfluous if the provision is to be the result of pious charity, *would be a precedent for giving to religious societies as such a legal agency in carrying into effect a public and civil duty.* (emphasis added).

This was followed by the Virginia State Constitutional Convention of 1829 which did not permit the incorporation of a theological seminary by the state legislature.[70] The currently operative Constitutions of both West Virginia and Virginia still have this restriction "the General Assembly shall not grant a charter of incorporation to any church or religious denomination."[71]

The matter of the seized lands wound up in the United States Supreme Court which voided, as contrary to the principles of natural justice, two Virginia acts which purported to divest the Episcopal Church of title to property 'acquired under the faith of previous law,' in Terret v. Taylor, with even Justice Joseph Story saying, "The Revolution might justly take away the public patronage . . . and the compulsive taxation for the support of the Church.".[72]

---

70. Robertson, op. cit. p. 56.

71. Constitution of Virginia, Art. IV, sec. 59; Constitution of West Virginia, Art. VII, Sec. 47.

72. 9 Cr. 43 (1815).

The Virginia State Constitutional Convention, however, had to take one more swipe at the churches and provided that one was not to be permitted to make a bequest in his will to any denomination or to any particular congregation.[73]

Madison wanted his position to be interpreted correctly and on two other occasions he demonstrated what he meant by separation of state and church. In a second veto, while he was President, on February 28, 1811 he returned to the House of Representatives a bill concerning the question of land for a Baptist church in the Mississippi Territory.[74] His Veto Message said,

> "Because the bill in reserving a certain parcel of land of the United States for the use of said Baptist Church comprises a principle and precedent for the appropriation of funds of the United States for the use and support of religious societies, contrary to the article of the Constitution which declares that "Congress shall make no law respecting an establishment of religion."

Madison further expressed great concern least "Ecclesiastical Bodies" should gain excess possession of property. He feared that power would accompany it and particularly feared that the land would be theirs "in perpetuity"[75] i.e. Mortmain. Therefore, in yet another Memorandum he wrote:[76]

> In the United States there is a double motive for fixing limits in this case, because wealth may increase not only from additional gifts, but from exhorbitant advances in the value of the primitive one. In grants of vacant lands, and of

---

73. Robertson, op. cit. p. 56.

74. Hunt, Galliard, ed. The Writings of James Madison, New York, G. P. Putnam's Sons, 1900, Vol. I, p. 40.

75. "Essay on Monopolies, Perpetuities, Corporations, Ecclesiastical Endowments" in Fleet, ed. *Madison's Detached Memoranda*, 3 William and Mary Q. 534 (1946), p. 555.

76. Sonne, Niels H. *Liberal Kentucky*, 1780-1828, University of California Press, 1939, p. 7.

> lands in the vicinity of towns and cities the increase of value is often such as if frozen, would essentially control the liberality confirming them."

In 1823, in a letter to Edward Everett, he wrote further,

> "Prior to the Revolution, the Episcopal Church was established by law in this State. On the Declaration of Independence, it was left with all other sects to self-support."[77]

Madison also added this note to his writings, in obvious disapproval,

> "See also attempt in Kentucky for example, where it was proposed to exempt Houses of Worship from taxes."

and deemed this to be an "encroachment by Ecclesiastical Bodies" inconsistent with constitutional "separation between religion and government."[78]

The disestablishment was so complete that in the early state constitutions there was no constitutional provision for tax exemption of the churches. However, the other side of the coin was that so long as church societies were the recipients of money raised by taxation, there was a strong reason why they should be exempt from it. The churches were small in number, meagre in attendance, and poor. They were granted exemptions from taxation as a matter of course. No need for exemption laws as such were felt, but soon complaints of the exemptions were voiced: in Massachusetts in 1837,[79] in New Hampshire in 1842,[80] and in New Jersey in 1851.[81] The churches as always

---

77. IX Writings of James Madison 127 (Hunt ed. 1910).

78. Fleet, ed., op. cit. p. 555.

79. All Saints Parish v. Brookline, 178 Mass. 404.

80. Franklin Street Society v. Manchester, 60 N.H. 342.

81. State v. Jersey City, 24 N. J. Law 108.

made their political power felt and legislatures were persuaded to pass exemption statutes. However, statutes can be declared unconstitutional, and the churches saw that state constitutional provisions only would protect them in their claim to exemptions. Up to 1916, ten states with constitutions adopted between 1780 and 1867 had no provisions for exemption. These were Massachusetts, Constitution of 1780; New Hampshire, Constitution of 1784; Vermont, Constitution of 1793; Connecticut, Constitution of 1818; Maine, Constitution of 1819; Rhode Island, Constitution of 1842; New Jersey, Constitution of 1844; Wisconsin, Constitution of 1848; Iowa, Constitution of 1857 and Maryland, Constitution of 1867.[82] In those states, practices resting on custom or statutes alone gave exemptions. In the remaining thirty eight states, thirteen, by constitutions adopted between 1859 and 1911 either granted exemptions or prohibited the legislatures from taxing, the other twenty five extended to the legislatures the power to pass exemption statutes.[83] We will see that in the present situation, thirty three states have constitutional provisions among which twenty two give exemptions and eleven empower legislatures to give exemptions.[84]

Our nation was not yet fifty years old when the first series of legal challenges came against the exemptions, which resulted in the court cases supra. The claims for the continuance of the exemption were always linked with demands that the nation be recognized as Christian. By 1844 the religious community, with persistence, had been able to influence a candidate for the president of the United States, and James Buchanan on January 18, 1844 introduced into the United States Senate a memorial inspired by Christian theologians demanding that God be recognized, Christ acknowledged as the Saviour, and the

---

82. Zollman, Carl, "Tax Exemptions of American Church Property," Michigan Law Review, Vol. XIV, No. 8 (June, 1916) pp. 646-657.

83. Ibid, at page 649.

84. See p. 37 ff.

Bible made the supreme authority in Law.[85] (Buchanan became president in 1856 although he did not win a majority of the popular vote.)

An entire state was soon involved in the issue. In 1850 bills were introduced in both the Senate and the House of Representatives in Pennsylvania "to repeal laws exempting certain property from taxation." The Commissioners of the County of Philadelphia ordered a Memorial to be prepared by Elihu D. Tarr on the "Subject of the Laws Exempting Certain Property from Taxation" and this was presented to the state legislature on December 4, 1850.[86]

Pennslyvania was the first state to adopt a constitutional amendment specifically exempting church property. The vested interest pressuring for this is immediately apparent. Even Virginia gave in. Pennsylvania's had come in 1835,[87] Massachusetts in 1836, Virginia in 1841, New Hampshire in 1842.[88]

The struggle became apparently one of re-establishment. Without the recognition that Christianity was the major force in the nation there could not be a call for indirect subsidy of tax exemption and we find every facet of the fight with the two ideas inseparably linked. The idea of a "Christian Amendment" took hold during the Civil War period when our nation was perceived to be "in trouble" because of its "Godless Constitution." The Committee on the Judiciary of the House of Representatives, on February 18, 1874,[89] with Mr. Benjamin F. Butler reporting to the Congress stated that the framers of the Constitution had seen fit not to do this and the determination of the founding fathers should be sustained. The specific

85. O'Hair, Madalyn Murray, "The U.S. Congress and The Religionists," Society of Separationists, Inc., Austin, Texas. 1969.

86. Robertson, op. cit., p. 66.

87. Ibid, p. 67.

88. Zollman, op. cit. p. 649.

89. Report No. 143, 43rd Congress, 1st Session.

proposal was to amend the Preamble of the Constitution in this wise: (proposed additions italicized)

> "We, the people of the United States in order to *acknowledge Almighty God as the source of all authority and power in civil government, the Lord Jesus Christ as the Ruler among the nations, and His will, revealed in the Holy Scriptures, as the Supreme authority, in order to constitute a Christian government* form a more perfect union, establish justice, insure domestic tranquility, etc."

Supreme Court Justice William Strong was a leading figure in this movement.[90]

A Francis E. Abbot became the leader of the opposition and alternately proposed a change to the First Amendment of the Constitution:[91]

> Section 1. Neither Congress nor any state shall make any law ... granting any special privilege, immunity, or advantage to any sect or religious body or to any number of sects or religious bodies; or taxing the people of any state, either directly or indirectly for the support of any sect or religious body.
>
> Section 2. No person shall ever by any state be required by law to contribute directly or indirectly to the support of any religious society or body of which he or she is not a voluntary member.

On a state level, the "First Demand" was that "churches and other ecclesiastical property shall be no longer exempt from taxation."[92] The argument endured on both a federal and state level for many years. Once again, Pennsylvania was involved in the Constitutional Convention of 1873 with an extended and

---

90. Robertson, op. cit., p. 72.

91. The Index, Vol. VII, No. 344, (July 27, 1876) p. 356. See also Robertson, op. cit., p. 74.

92. The Index, Vol. VII, No. 315 (Jan. 6, 1876) p. 7.

heated debate over church property exemption.[93] Indeed a year by year accounting is warranted

1863 forward, Missouri had taxed church property, including cemetaries from 1863 to 1876.[94]

1873 The Episcopal Committee of New York reported that a strong movement was on foot in Wisconsin to tax church property.[95]

1874. A movement developed in Massachusetts to withdraw tax exemptions.[96] The Illinois Methodist Conference Committee recommended the taxation of church property and gave ten reasons for this.[97] In the State of Iowa, Senator John Shane introduced a bill providing for the taxation of church property.[98] President James A. Garfield in a speech in Congress on June 22, 1874 said:

> "The divorce between Church and State ought to be absolute. It ought to be so absolute that no Church property anywhere, in any state, or in the nation, should be exempt from equal taxation; for if you exempt the property of any church organization, to that extent you impose a tax upon the whole community."[99]

1875 James G. Blaine, of Maine, leader in the House of Representatives on December 13, 1875 proposed the Blaine-

---

93. Pennsylvania Constitutional Convention, 1873, Debates, State Printing Office, Philadelphia), p. 94.

94. White, Philo, "Laws and Usages, in All the States, in Relation to the Taxing of Churches," *The Journal of the 7th Annual Convention of the Protestant Episcopal Church*, pp. 8-9, see Robertson, op. cit. p. 78.

95. Ibid.

96. Robertson, op. cit. p. 114.

97. The Index, Jan. 11, 1875, p. 63.

98. Brindley, John E., *History of Taxation in Iowa*, State Historical Society of Iowa, 1911, Ch. 12.

99. O'Hair, Madalyn Murray, "Let Us Prey," Society of Separationists, Inc., Austin, Texas, 1967.

Grant (16th) Amendment to the Constitution of the United States. In its features stood out the proposal that "no money raised by taxation in any state for the support of public schools ... shall ever be under the control of any religious sects or denominations. The bill was passed by the House the necessary two thirds vote (180-98).[100] It was defeated in the Senate because of the inclusion of a phrase "it shall not have the effect to impair the rights of property already vested."[101] (First vote: 27 yes, 15 no, 29 absent; second vote: 28 yes, 16 no, 27 absent.)

1876 The Massachusetts House of Representatives debated and voted on a bill (March 31, 1876) which would have required the taxation of all church property over $12,000 value. The vote was 64 for and 116 against the bill.[102] The Republican Party platform recommended an amendment prohibiting public funds from use by sectarian institutions and schools.[103] Every state from 1876 forward admitted to the union was compelled by Congress to write into its constitution a requirement that it maintain a school system "free from sectarian controls."[104] President Ulysses S. Grant gave a speech at Des Moines, Iowa on September 19, 1876 in which he proclaimed that the nation should "leave the matter of religion to the family altar, the Church, and the private school, supported entirely by private contributions."[105] On December 7, 1876 he presented a mandate to Congress with two congruent amendments to the United States Constitution, first to provide for a system of public schools across the land, and that no public monies should ever be used to support any religious or sectarian school. The second amendment was a proposal to tax church property, in

---

100. Congressional Record, House, Aug. 4, 1876, p. 5190.

101. Congressional Record, Senate, 4, Part 6, Aug. 11, 1876, p. 5453.

102. Robertson, op. cit. p. 75.

103. Ibid, p. 84.

104. Stokes, Anson Phelps and Pfeffer, Leo, Church and State in the United States, New York, Harper & Row, 1964, p. 435.

105. O'Hair, op. cit. p. 42.

order to correct "an evil" existing which was "the accumulation of the vast amount of untaxed church property" then existing in America.[106] William Lloyd Garrison entered the fray this year stating that the state had no right "to exempt church property from taxation."[107] And Elizabeth Cady Stanton, introduced the argument into the Woman Suffrage campaign with the statement that,[108]

> "If all those magnificent cathedrals with their valuable lands in Boston, Philadelphia and New York were taxed as they should be, the taxes of women who hold property would be proportionately lightened. . . . I cannot see any good reason why wealthy churches and a certain amount of property of the clergy should be exempt from taxation, while every poor widow in the land, struggling to feed, clothe, and educate a family of children, must be taxed on the narrow lot and humble home."

1877 On July 15th of 1877 the United States Senate debated the issue of tax exemption for churches in the District. Although strong opposition to the exemptions was offered the opposition was not successful.[109]

1880 The Republican Party platform again in 1880 recommended an amendment prohibiting public funds from use for sectarian institutions and schools.[110]

1890 The Kentucky State Constitutional Convention of 1890 held a vigorous and extended debate on the question.[111]

---

106. Robertson, op. cit. p. 79.

107. The Index, July 13, 1876, p. 327.

108. Stanton, Elizabeth C., The Index, Vol. VII, No. 364, Dec. 14, 1876, p. 595.

109. "Real Property Exempt from Taxation in the District of Columbia," Hearings Before the Committee on the District of Columbia, United States Senate, 77th Congress, 2d Session, U.S. Government Printing Office, 1942, p. 170.

110. Robertson, op. cit. p. 84.

111. Ibid, p. 78.

1896 The plea to have the "Christian Amendment" was again brought forth and introduced into Congress. On March 11th the Committee on the Judiciary gave it a hearing, and the idea was abandoned once more. This effort was reintroduced into the 60th and the 61st Congress,[112] and by

1910 there had been sixty nine religious measures of this nature introduced into the Congress of the United States.[113]

At the time that the New York Evening Post was edited by William Cullen Bryant it spoke editorially to this subject:[114]

> "The Evening Post has long been of the opinion that the American theory of a self-supporting church ought to be carried out to its full and legitimate conclusion, and that the separation of church and state ought to be complete. It should include the total discontinuance of contributions of public money, direct or indirect, to the support of any religious establishment. We have never been able to see the slightest difference in principle between the appropriation of a certain sum of money raised by tax to a particular church, and a release of that church from tax on its property to the same amount. The cost of the act in either case falls upon the taxpayers generally.

1915 the Committee on Taxation at the New York Constitutional Convention in June, 1915 had a number of persons including clergy appear in favor of abolishing the exemptions from taxation enjoyed by the church.[115]

Most recently complaints through the court systems have been undertaken and the three of them have been appealed to

---

112. O'Hair, Madalyn Murray, "The United States Congress and the Religionists," Society of Separationists, Inc., 1969.

113. Ibid.

114. O'Hair, Madalyn Murray, "An Earlier Effort to Tax The Church," Society of Separationists, Inc. 1969.

115. Morton, James F. Jr., *Exempting the Churches*, The Truth Seeker Company, New York, 1916, p. 40.

the Supreme Court in very recent years, Lundberg v. County of Alameda (California) 1956,[116] General Finance Corp. v. Archetto (Rhode Island) 1961,[117] Murray v. Comptroller of the Treasury (Maryland) 1966.[118] The fourth case on such appeal is this case.

Why all this trouble? Just how much money is involved?

The church takes literally the Biblical admonition "Let not thy left hand know what thy right hand doeth.".[119] There are no statistics available on church wealth. Not even the government of the United States can make an educated guess. There are no real dependable historical records. Churches are required to report to no one concerning their finances, even their own constituents. The national census of 1850 took some account of church property and about that time the Commissioners of the County of Philadelphia had a *Memorial* prepared in respect to tax records of that city.[120] In 1912 H. K. Carroll, LL.D., who had been in charge of the department of churches in the census of 1890 wrote a book *Religious Forces in the United States,* using the figures available from the prior census studies of the federal government. Wm. E. Hannon, Legislative Reference Librarian of the New York State Library did a study on the *Property Exempt from Taxation in the Forty Eight States.*[121] The Chamber of Commerce of White Plains, Westchester County, New York, completed a study of that county in 1919 and 1920.[122] Edith MacFadden of Massachusetts with informa-

116. 46 Cal. 2d 644, app. dismd. 352 U. S. 921.

117. 93 R. I. 392, app. dismd. 369 U. S. 423.

118. 241 Md. 383, Cert. den. 385 U. S. 865.

119. Matthew 6:3.

120. Robertson, op. cit. p. 67.

121. Hannan, William E. Property Exempt from Taxation in the Forty-eight States, Legislation Bulletin 42, University of the State of New York, 1917.

122. Tax Exemptions on Real Estate, an Increasing Menace, White Plains, New York, Westchester Chamber of Commerce, 1922.

tion provided by local assessors and offices of Tax Commissioners attempted a study in 1925.[123] In 1934 another study was attempted in New York State, by Tobin, Hannan and Tolman.[124] However, frequently the religious property was not adequately identified. Now, taking only the property which was clearly distinguished as of a religious nature, we can make a small table of estimate. There is some aid in that the Federal law of 1850 prescribing the nature of census-taking for 1850, 1860 and 1870 prescribed for the first time that 'social statistics' be taken and among the subjects was 'religious organizations' so that from each denomination the government asked for meaningful figures in relationship to 'number of churches, church accommodations and the value of church property.'[125]

Using all of these sources we have then, this result:

	Total value of reported church property.
1850	$83,000,000[126]
1860	165,000,000[127]
1870	354,483,587[128]
1880	
1890	679,694,439[129]
1906	1,257,575,867[130]

123. MacFadden, Edith, *The Next Question*, see Robertson, op. cit. p. 144.

124. The Exemption from Taxation of Privately Owned Real Property Used for Religious, Charitable, and Educational Purposes in New York State.

125. Robertson, op. cit., p. 147.

126. Ulysses S. Grant, President of the United States, in 1875, published this estimate, December 7, 1875 to the Congress of the United States.

127. Morton, op. cit. p. 76.

128. Ibid; U. S. Census, 1870, I, page 506.

129. Morton, op. cit. p. 76.

130. Bureau of Census, Special Reports, Religious Bodies, 1906, Vol. I, p. 21.

1916 . . . . . 1,676,600,580[131]
1926 . . . . . 3,839,500,610[132]
1936 . . 3,411,875,467 at depreciated depression rates.[133]

Within these figures we have a smattering of other knowledge. In New York State the amount of church property

1890 . . . . . $140,123,008[134]
1906 . . . . . 255,166,284[135]
1936 . . . . . 564,078,000[136]

In New York City, the amount of church property

1890 . . . . . 73,352,437[137]
1914 . . . . . 170,445,725[138]

In four decades explicit amounts as to denominations are available.

1906:	Roman Catholics	$292,638,502[139]
	Protestants	935,942,578
	All others	28,994,502
1916	Roman Catholics	374,206,895[140]

131. Bureau of Census, Special Reports, Religious Bodies, 1916, Vol. I, p. 12.

132. Bureau of Census, Special Reports, Religious Bodies, 1926, Vol. I, p. 3.

133. Bureau of Census, Special Reports, Religious Bodies, 1936, Vol. I, p. 4.

134. Morton, op. cit. p. 78.

135. Ibid.

136. Robertson, op. cit. p. 146.

137. Morton, op. cit. p. 78.

138. Ibid.

139. Bureau of Census, Special Reports, Religious Bodies, 1906, Vol. I, p. 21.

140. Bureau of Census, Special Reports, Religious Bodies, 1916, Vol. I, p. 12.

	Methodist Episcopal .	215,102,014
	Episcopal	154,990,150
	Presbyterian	150,239,123
	Baptists	94,644,133
1926	Roman Catholics	837,271,053[141]
	Methodist Episcopal .	406,165,659
	Presbyterian	338,152,743
	Episcopalian	314,596,738
1936 at depreciated depression values.	Roman Catholic	787,001,357[142]
	Methodist Episcopal .	345,402,555
	Presbyterian	270,464,345
	Episcopalian	266,400,447

The only estimate that can be given then is that at 1926 the property held by the church was about four billion dollars. Just forty years later three estimates have been made, one by United Press International from material gathered from and by the Wall Street Journal,[143] the Columbia Broadcasting System for a network special on church wealth[144] and Dr. Martin Larson.[145]

Dr. Larson's estimate, based on studies of tax records, assessment records, and land studies, is that the churches today own 79.5 billion dollars worth of real estate.[146] C.B.S. accepts a figure of $80 billion.[147] UPI estimate is at $100 billion.[148] It needs to be pointed out here that the total assets of cash, real

---

141. Bureau of Census, Special Reports, Religious Bodies, 1926, Vol. I, p. 3.

142. Bureau of Census, Special Reports, Religious Bodies, 1936, Vol. I, p. 4.

143. Robert J. Regan for United Press International, in August, 1967.

144. C.B.S. Reports, "The Business of Religion," as broadcast over the CBS Television Network, June 18, 1968.

145. Larson, Martin A., Church Wealth and Business Income, Philosophical Library, New York, 1965.

146. Ibid, p. 47.

147. CBS Reports, op. cit.

148. Robertson, op. cit. p. 167.

estate, inventories of the five largest American corporations in their 1964 reports were as follows:[149]

Standard Oil of New Jersey	$12.0 billion
General Motors	10.8
Ford Motor	5.9
United States Steel	5.1
Socony Mobil Oil	4.7
	$48.5 billion

as compared to the real estate holdings alone of churches having $79.5 billion.

Of this, the distribution of property now appears to be[150]

Roman Catholic	$44.5 billion
Protestant	28.
Jewish	7.0
	$79.5 billion

It appears to be superfluous to point out that the Roman Catholic Church rivals the holdings of the five largest American corporations. Roman Catholics constitute 24% of the population by exaggerated claim.

Percentage populations of major religious groupings, *claimed.*

Protestant	36 %
Roman Catholic	24 %
Jews	2.7%
Persons who have never been to churches, never joined any churches	37 %
Persons profession no religion	2.7%*

*included in above four figures, as both church and non-church persons.

The United States government has been able to keep one record of church matters, recorded in the Statistical Abstract of

149. Olson, Carl, Tax Exemptions of Churches and Churchmen in the United States, Masters Thesis, School of Journalism, Columbia University, May, 1968, p. 27.

150. Larson, op. cit. p. 47.

the United States, and this is the amount of *new* church construction.[151]

Church construction–NEW, in years reported.

1950	$ 409,000,000	1963	$1,001,000,000
1955	734,000,000	1964	992,000,000
1960	1,013,000,000	1965	1,207,000,000
1961	1,003,000,000	1966	1,164,000,000
1962	1,033,000,000	1967	1,093,000,000

We turn now to see what property is exempt, under what legal rules, and what the status is today, on a state level. We must first recall that the Federal government had placed prohibitions by the First Amendment but that the states were not immediately bound by this. However, during the period after the formation of the federal government dis-establishment proceeded in most states before the religious community could muster itself in the legal and political arena to retain its prestigious position by other approaches than the coercive use of state power on citizens. In 1868, after the Civil War, the Fourteenth Amendment was added to the Constitution of the United States, and from the debates in respect to this there came the interpretation that transformed the Federal policy of separation to a state policy. Mr. Justice Roberts in Cantwell v. Connecticut noted officially that the First Amendment in effect "rendered the legislatures of the states as incompetent as Congress to enact such laws (respecting an establishment of religion)."[152] Since that time it has been left to the Supreme Court to develop the meaning of the prohibition.

At the state level religion could and did exert more influence. Although the most recent statutes and constitutional provisions were forced through by religious political pressures, a review of the provisions of both reveal with what misgivings and with what restrictions and reservations the exemptions were granted.

151. Lerner, op. cit. p. 693.

152. 310 U. S. 396 (1940).

The churches were expected to be small, poor, devoted solely to religious ends, and to remain that way. God's little acre was indeed regarded as being a very small lot.

One of the most curious facets of the entire business of tax exemption for the church is that, actually, such exemption is forbidden by very explicit terms in the constitutions of forty four states in America,[153] as follows: *Alabama*, ". . . no one shall be compelled by law . . : to pay any . . . taxes . . . for maintaining any minister or ministry . . .". – *Alaska* "No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.". *Arizona*, bars taxes or public funds "in aid of any church . . .". *Arkansas* ". . . no man can, of right, be compelled to . . . support any place of worship . . .". *California*, prohibits public funds "or anything" to be given to or in aid of any religious sect, church. *Colorado*, "No persons shall be required to . . . support any ministry or place of worship, religious sect or denomination . . ."; this state also forbids the use of public funds to help any church or sectarian society, forbids grant by the State of money to any church, or

153. Constitutional references as follows: Alabama, Art. I, sec. 2, (Declaration of Rights); Alaska, Art. I, sec. 4 (Declaration of Rights); Arizona, Art. 9, sec. 10; California, Art. 4, sec. 30; Colorado, Art. II, sec. 4; Connecticut, Article Seventh, sec. 1; Delaware, Art. I, Sec. 1; Florida, Art. 6 (Declaration of Rights); Georgia, 2-114; Hawaii, Art. I, sec. 3; and Art. VI, sec. 6; Idaho, Art. 1, sec. 4 and Art. 9, sec. 5; Illinois, Art. II, sec. 3; Indiana, Art. 1, sec. 6; Iowa, Art. 1, sec. 3; Kansas, (Bill of Rights), sec. 7; Kentucky, (Bill of Rights), sec. 5; Louisiana, Art. 4, Sec. 8; Maine, no reference; Maryland, Art. 36; Massachusetts, Art. 18, Sec. 2; Michigan, Art. II, sec. 3; Minnesota, (Bill of Rights), Art. I, sec. 16; Mississippi, Art. 4, sec. 66; Missouri, Art. 1, sec. 7; Montana, Art. III, sec. 4 and Art. XI, sec. 8; Nebraska, (Bill of Rights), Art. I, sec. 4; Nevada, Art. 11, sec. 10; New Hampshire, Part I, Art. 6th; New Jersey, Art. I, sec. 4; New Mexico, Art. VII, sec. 3; New York, no reference; North Carolina, no reference; North Dakota, no reference; Ohio, (Bill of Rights), Art. I, sec. 7; Oklahoma, Art. 1, Sec. 5; Oregon, Art. I, sec. 5; Pennsylvania, Art. I, sec. 4; Rhode Island, Art. I, sec. 3; South Carolina, Art. I, sec. 4; South Dakota, Art. VI, sec. 3; Tennessee, Art. I, sec. 3; Texas, Art. 1, sec. 7; Utah, Art. I, sec. 4; Vermont, Art. Ch. I, art. 3rd; Virginia, Art. VI, sec. 58; Washington, Art. 1, sec. 12; West Virginia, Art. III, sec. 15; Wyoming, Art. 1, sec. 19.

for any sectarian purpose. *Connecticut,* ". . , no person shall by law be compelled to . . . support . . . any congregation, church, or religious association.". *Delaware,* ". . . no man shall or ought to be compelled to . . . contribute to the erection or support of any place of worship, or to the maintenance of any ministry . . ." *Florida,* bars public funds to aid any church or sect. *Georgia,* forbids public money to aid churches or 'any sectarian institution.' *Hawaii* "No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof . . ." This state also prohibits the use of public funds for the establishment of religion. *Idaho,* "No person shall be required to . . . support any ministry or place of worship, religious sect or denomination . . ." *Illinois,* No person shall be required to . . . support any ministry or place of worship . . .". *Indiana,* prohibits public money to be used for the support of religious institutions. *Iowa,* ". . . nor shall any person be compelled to . . . pay . . . taxes for building or repairing places of worship, or the maintenance of any minister, or ministry." *Kansas,* ". . . nor shall any person be compelled to . . . support . . . any form of worship." *Kentucky,* ". . . nor shall any person be compelled to . . . contribute to the erection or maintenance of any such place (i.e. place of worship) or to the salary or support of any minister of religion.". *Louisiana,* "No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, or denomination of religion, or in aid of any priest, minister or teacher thereof, as such.", *Maine* no reference. *Maryland,* ". . . nor ought any person be compelled to contribute . . . to maintain, any place of worship . . ." *Massachusetts,* "and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society. *Michigan,* "No person shall be compelled . . . to contribute to the erection or support of any place of religious worship, or to pay . . . taxes . . . for the support of any minister of the gospel . . .". *Minnesota,* ". . . nor shall any man be compelled to . . . support any place of worship, or to maintain any religious or ecclesiasti-

cal ministry, . . .". *Mississippi*, forbids grant or donation or gratuity "for a sectarian purpose or use,". *Missouri*, bars state funds to aid any church or sect. *Montana*, "No person shall be required to . . . support any ministry." *Nebraska*, "No person shall be compelled . . . to support any place of worship." *Nevada* bars public funds 'for sectarian purpose.' *New Hampshire* has a very peculiar permissive clause which reads as follows: "As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay, in the hearts of men, the strongest obligations to due subjection; and as the knowledge of these is most likely to be propagated through a society, by the institution of the public worship of the Deity, and of public instruction in morality and religion; therefrom, to promote these important purposes, the people of this state have a right to empower and do hereby fully empower, the legislature, to authorize, from time to time, the several towns, parishes, bodies corporate, or religious societies, within this state, to make adequate provision, at their own expense, for the support and maintenance of public Protestant teachers of piety, religion, and morality . . ." *New Jersey*, "There shall be no establishment of one religious sect in preference to another. *New Mexico*, "No person shall be required to . . . support any religious sect or denomination." *New York*, no reference, *North Carolina*, no reference. *North Dakota*, no reference. *Ohio*, "No person shall be compelled to . . . support any place of worship . . ." *Oklahoma*, No public money or property shall ever be appropriated, applied, donated, or used directly or indirectly, for the use, benefit, or support of any sect, church, denomination or system of religion or the use, benefit or support of any priest, preacher, minister, or other religious teacher or dignitary or sectarian institution as such. *Oregon*, bars appropriations of public funds "for the benefit of any religious, or theological institution." *Pennsylvania*, ". . . no man can of right be compelled to . . . support any place of worship, or to maintain any ministry . . ." *Rhode Island*, "no man shall be compelled to

. . . support any place of worship, or to maintain any ministry . . .". *South Carolina,* The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. *South Dakota,* No person shall be compelled to support any ministry or place of worship . . . No money or property of the state shall be given or appropriated for the benefit of any sectarian or religious society or institution. *Tennessee,* ". . . no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent." *Texas,* "No money shall be appropriated or drawn from the treasury for the benefit of any sect or religious society, theological or religious seminary; nor shall property belonging to the state be appropriated for such purposes.". *Utah,* "There shall be no union of Church and State, nor shall any church dominate the State or interfere." with its functions. *Vermont,* "no man ought to, or of right can be compelled to . . . support any place of worship . . .". *Virginia,* "No man shall be compelled to . . . support any religious worship . . . And the General Assembly shall not . . . pass any law . . . or the people of any district within this State, to levy on themselves or others any tax for the erection or repair of any house of public worship, or for the support of any church . . .". *Washington,* "No public money or property shall be appropriated for, or applied to any religious worship, exercise or instruction, or the support of any religious establishment. *West Virginia,* "No man shall be compelled to . . . support any religious worship, place or ministry whatsoever . . .". *Wisconsin,* ". . . nor shall any man be compelled to . . . erect or support any place of worship, or to maintain any ministry . . . nor shall any money be drawn from the treasury for the benefit of religion, societies of religion or theological seminaries." *Wyoming,* bars state money for aid of any sectarian or religious society or institution.

Thirty three states have constitutional provisions concerned with tax exemptions to religion. Forty nine states have statutes, codes, general laws, or tax laws concerned with the subject specifically.

We need to look carefully at the stipulations, and examine first the constitutions, as to what they do, what is involved, and to whom the exemption goes.

First the diverse states exempt from taxation,[154] permits exemption from taxation,[155] gives real property tax exemption,[156] exempts from state and local taxes and inheritance taxes,[157] empowers the legislature to exempt from taxation,[158] requires the legislature to exempt from taxation,[159] permits the legislature to exempt from taxation,[160] authorizes the legislature to exempt from taxation,[161] directs that exemptions from taxation may be granted only by general laws,[162] states that the General Assembly may exempt,[163] or the legislature by general law may exempt.[164]

In addition, one state notes specifically that the exempting section does not apply to special assessments[165] and one state adds that "where such property, prior to acquisition by exempt

---

154. *Alabama*, Art. 4, sec. 91; *Alaska*, Art. IX, sec. 4; *Arkansas*, Art. 16, sec. 5; *California*, Art. 13, sec. 1½; *Colorado*, Art. X, sec. 5; *Delaware*, Art. 10, sec. 3; *Kansas*, Art. 11, sec. 1; *Kentucky*, Art. 170; *Louisiana*, Art. 10, sec. 4; *Minnesota*, Art. 9, sec. 1; *Montana*, Art. XII, sec. 2; *New Mexico*, Art. VIII, sec. 3; *North Dakota*, Sec. 176; *Oklahoma*, Art. 10, sec. 6; *South Carolina*, Art. 10, sec. 4; *Utah*, Art. XIII, sec. 2; *Virginia*, Sec. 183; *Wyoming*, Art. 15, sec. 12.

155. *Arizona*, Art. 9, sec. 2.

156. *Alabama*, Art. 4, Sec. 91; *California*, Art. 13, sec. 1½.

157. *Virginia*, Sec. 183.

158. *Florida*, Art. 9, sec. 1; *Illinois*, Art. IX, sec. 3; *Indiana*, Art. 10, sec. 1; *Missouri*, Art. 10, sec. 6; *Ohio*, Art. XII, sec. 2; *Pennslyvania*, Art. 9, sec. 1; *Tennessee*, Art. 2, sec. 28; *Texas*, Art. 8, sec. 2.

159. *South Dakota*, Art. XI, sec. 6.

160. *South Carolina*, Art. 10, sec. 1.

161. *California*, Art. 13, sec. 1½, *Georgia*, Art. VII, par. IV (2-5404); *West Virginia*, Art. X, sec. 1.

162. *New Jersey*, Art. 8, sec. 1, par 2; *New York*, Art. 16, sec. 1.

163. *North Carolina*, Art. V, sec. 5.

164. *Nebraska*, Art. VIII, sec. 2.

165. *Utah*, Art. XIII, sec. 2.

organization, was subject to a tax lien, it shall continue so subject."[166]

What is exempt? It is property,[167] all property,[168] all, or any portion of, property,[169] real and personal property,[170] all property, real and personal,[171] all real and personal property,[172] all real property and equipment,[173] all church property,[174] all churches, church property and houses of worship,[175] churches used as such,[176] places of religious worship,[177] actual places of religious worship,[178] actual places of worship . . . in no event more than one acre,[179] houses,[180] lots with the building thereon,[181] lots and buildings thereon . . . limited to one acre in cities or towns and five acres outside thereof,[182] places . . . with the grounds attached thereto and . . . appurtenant to the house of worship . . . not exceeding

---

166. *New Mexico*, Art. VIII, sec. 3.

167. *Arizona*, Art. 9, sec. 2; *Florida*, Art. 9, sec. 1; *Illinois*, Art. IX, sec. 3; *Indiana*, Art. 10, sec. 1; *Louisiana*, Art. 10, sec. 4; *Montana*, Art. XII, sec. 2; *Nebraska*, Art. VIII, sec. 2; *North Carolina*, Art. V, sec. 5; *South Carolina*, Art. 10, sec. 1; *Virginia*, Sec. 183; *West Virginia*, Art. X, sec. 1.

168. *Georgia*, Art. VII, par. IV (2-5404); *Kansas*, Art. 11, sec. 1; *New Mexico*, Art. VIII, sec. 3; *North Dakota*, Sec. 176; *Oklahoma*, Art. 10, sec. 6; *South Dakota*, Art. XI, sec. 6; *Tennessee*, Art. 2, sec. 28.

169. *Alaska*, Art. IX, sec. 4; *California*, Art. 13, sec. 1c.

170. *New Jersey*, Art. 8, sec. 1, par. 2.

171. *Colorado*, Art. X, sec. 5; *Missouri*, Art. 10, sec. 6.

172. *Delaware*, Art. 10, sec. 3.

173. *California*, Art. 13, sec. 1½.

174. *New Mexico*, Art. VIII, sec. 3.

175. *Minnesota*, Art. 9, sec. 1.

176. *Arkansas*, Art. 16, sec. 5.

177. *Georgia*, Art. VII, par. IV; *Louisiana*, Art. 10, sec. 4.

178. *Pennsylvania*, Art. 9, sec. 1.

179. *Texas*, Art. 8, sec. 2.

180. *Ohio*, Art. XH, sec. 2.

181. *Utah*, Art. XIII, sec. 2.

182. *Alabama*, Art. 4, sec. 91; *Wyoming*, Art. 15, sec. 12.

one-half acre in cities or towns and not exceeding two acres in the country,[183] buildings and premises actually occupied by said structures,[184] buildings with the land they actually occupy, and the furniture and furnishings therein . . . together with the additional adjacent land reasonably necessary for the convenient use of any such building,[185] church parsonages,[186] parsonages,[187] all parsonages or residences, with not exceeding one-half acre of ground in towns and cities and two acres of ground in the country appurtenant thereto,[188] any property used as a dwelling place, in no event more than one acre,[189] rectaries,[190] church schools.[191]

Under what conditions is the property exempt? If it is used for,[192] used only for,[193] used exclusively for,[194] used solely for,[195] used solely and exclusively for,[196] wholly and exclu-

---

183. *Kentucky*, Art. 170.

184. *South Carolina*, Art. 10, sec. 4.

185. *Virginia*, Sec. 183.

186. *Wyoming*, Art. 15, sec. 12.

187. *Louisiana*, Art. 10, sec. 4.

188. *Kentucky*, Art. 170.

189. *Texas*, Art. 8, sec. 2.

190. *Louisiana*, Art. 10, sec. 4.

191. *Wyoming*, Art. 15, sec. 12.

192. *Delaware*, Art. 10, sec. 3; *Florida*, Art. 9, sec. 1; *Illinois*, Art. IX, sec. 3; *Indiana*, Art. 10, sec. 1; *Kentucky*, Art. 170; *Louisiana*, Art. 10, sec. 4; *Montana*, Art. XII, sec. 2; *New Mexico*, Art. VIII, sec. 3; *South Carolina*, Art. 10, sec. 1; *Tennessee*, Art. 2, sec. 28; *West Virginia*, Art. X, sec. 1.

193. *Georgia*, Art. VII, par. IV (2-5404).

194. *Alabama*, Art. 4, sec. 91; *Alaska*, Art. IX, sec. 4; *Arkansas*, Art. 16, sec. 5; *Kansas*, Art. 11, sec. 1; *Missouri*, Art. 10, sec. 6; *Nebraska*, Art. VIII, sec. 2; *New Jersey*, Art. 8, sec. 1, par. 2; *New York*, Art. 16, sec. 1; *Ohio*, Art. XII, sec. 2; *North Dakota*, Sec. 176; *Oklahoma*, Art. 10, sec. 6; *Texas*, Art. 8, sec. 2; *Utah*, Art. XIII, sec. 2; *Wyoming*, Art. 15, sec. 12.

195. *California*, Art. 13, sec. 1½; Art. 13, sec. 1c; *South Dakota*, Art. XI, sec. 6.

196. *Colorado*, Art. X, sec. 5.

sively used for,[197] occupied as.[198]

What about ownership? It must be lawfully owned and held by,[199] owned by,[200] held for,[201] belonging to.[202]

What is the specific use indicated? Public worship,[203] religious worship,[204] actual religious worship,[205] religious purposes,[206] (churches) used as such,[207] only for residential purposes,[208] as a dwelling place for the ministry,[209] occupied as a home,[210] used as places of residence,[211] for the residence of the minister.[212]

---

197. *Virginia*, Sec. 183.

198. *Kentucky*, Art. 170.

199. *Virginia*, Sec. 183.

200. *California*, Art. 13, sec. 1c; *Georgia*, Art. VII, par. IV (2-5405); *Kentucky*, Art. 170; *Nebraska*, Art. VIII, sec. 2; *New Jersey*, Art. 8, sec. 1, par. 2; *New York*, Art. 16, sec. 1.

201. *North Carolina*, Art. V, sec. 5; *Tennessee*, Art. 2, sec. 28.

202. *Louisiana*, Art. 10, sec. 4.

203. *Ohio*, Art. XII, sec. 2.

204. *Alabama*, Art. 4, Sec. 91; *Colorado*, Art. X, sec. 5; *Kentucky*, Art. 170; *Louisiana*, Art. 10, sec. 4; *Missouri*, Art. 10, sec. 6; *Pennsylvania*, Art. 9, sec. 1; *Utah*, Art. XIII, sec. 2; *Virginia*, Sec. 183; *Wyoming*, Art. 15, sec. 12.

205. *Montana*, Art. XII, sec. 2.

206. *Alaska*, Art. IX, sec. 4; *California*, Art. 13, sec. 1½; Art. 13, sec. 1c; *Florida*, Art. 9, sec. 1; *Illinois*, Art. IX, sec. 3; *Indiana*, Art. 10, sec. 1; *Kansas*, Art. 11, sec. 1; *Nebraska*, Art. VIII, sec. 2; *New Jersey*, Art. 8, sec. 1, par. 2; *New York*, Art. 16, sec. 1; *North Carolina*, Art. V, sec. 5; *North Dakota*, sec. 176; *Oklahoma*, Art. 10, sec. 6; *South Carolina*, Art. 10, sec. 1; *South Dakota*, Art. XI, sec. 6; *Tennessee*, Art. 2, sec. 28; *West Virginia*, Art. X, sec. 1.

207. *Arkansas*, Art. 16, sec. 5.

208. *Georgia*, Art. VII, par. IV.

209. *Texas*, Art. 8, sec. 2.

210. *Kentucky*, Art. 170.

211. *Louisiana*, Art. 10, sec. 4.

212. *Virginia*, Sec. 183.

What entities may use or own, as above? A church,[213] churches,[214] religious denominations,[215] religious groups,[216] religious bodies,[217] religious associations,[218] religious organizations,[219] religious societies,[220] strictly religious society,[221] any religious society,[222] any corporation or association organized or conducted exclusively for . . . religious purposes.[223]

What special provisions are there in relationship to the use or ownership, as above? It must be non-profit,[224] from which no income is derived,[225] yielding no revenue to the church,[226] not operating for profit,[227] not conducted for profit,[228] not used or held for profit,[229] not held for profit,[230] not owned or used for financial gain or profit to either the owner or user,[231] not conducted for profit and no part of whose net earnings inures

---

213. *Texas*, Art. 8, sec. 2.

214. *Virginia*, Sect. 183.

215. *Louisiana*, Art. 10, Sec. 4.

216. *Arizona*, Art. 9, sec. 2; *California*, Art. 13, sec. 1½; *Georgia*, Art. VII, par. IV (2-5404).

217. *South Dakota*, Art. XI, sec. 6; *Virginia*, Sec. 183.

218. *Arizona*, Art. 9, sec. 2.

219. *Illinois*, Art. IX, sec. 3.

220. *California*, Art. 13, sec. 1c;

221. *Texas*, Art. 8, sec. 2.

222. *Kentucky*, Art. 170.

223. *New Jersey*, Art. 8, sec. 1, par. 2; *New York*, Art. 16, sec. 1.

224. *Alaska*, Art. IX, sec. 4.

225. *Georgia*, Art. VII, par. IV (2-5404).

226. *Texas*, Art. 8, sec. 2.

227. *New Jersey*, Art. 8, sec. 1, par. 2; *New York*, Art. 16, sec. 1.

228. *Virginia*, Sec. 183.

229. *Arizona*, Art. 9, Sec. 2.

230. *Missouri*, Art. 10, sec. 6.

231. *Nebraska*, Art. VIII, sec. 2.

to benefit of any private individual,[232] not leased for profit or income,[233] for no other purpose–.[234]

In each case the property exempted can only be exempted if used by,[235] actually used by,[236] used solely by,[237] occupied by,[238] or belonging to,[239] owned by,[240] owned solely by,[241] in equitable title to,[242] in legal title to,[243] or held by,[244]

Unlike the Federal Constitution, which has in it no reference to a superior religious entity, forty nine state constitutions have respectful deference thereto. The actual language used is 'Almighty God,'[245] 'Creator,'[246] 'God,'[247] 'supreme Ruler of

---

232. *California*, Art. 13, sec. 1c.

233. *Louisiana*, Art. 10, sec. 4.

234. *Kentucky*, Art. 170.

235. *Connecticut*, sec. 12-81 (13); *Iowa*, 427.1; *Maine*, 91-A, 10 Subsection G.

236. *Connecticut*, sec. 12-81 (15).

237. *Wisconsin*, 70.11 (1).

238. *New Hampshire*, 72:23.

239. *Idaho*, 63-105B, *North Dakota*, Sec. 57-02-08.

240. *Colorado*, 137-17; *Connecticut*, sec. 12-81 (13); *Illinois*, 120-500.2; *Kansas*, 79-201; *Maine*, 91-a, 10 Subsection G, I; *Michigan*, 7.7; *Nevada*, 361.125; *North Dakota*, Sec. 57-02-08; *New Hampshire*, 77:23; *Texas*, Sec. 7150 (1); *Vermont*, 32-3802 (1).

241. *Wisconsin*, 70.11 (1).

242. *Pennsylvania*, 5453.202 also 5453.204.

243. Ibid.

244. *New York*, Sec. 436.

245. *Alabama*, Preamble to Constitution; *Arizona*, Preamble to Constitution; *Arkansas*, Preamble to Constitution, Art. 2; sec. 24; *California*, Preamble to Constitution; *Delaware*, Art. I, sec. 1; *Idaho*, Preamble to Constitution; *Illinois*, Preamble to Constitution; *Indiana*, Preamble to Constitution, Art. 1, sec. 2; *Kansas*, Preamble to Constitution; *Kentucky*, Preamble to Constitution, Bill of Rights, sec. 1; *Maryland*, Preamble to Declaration of Rights; *Michigan*, Preamble to Constitution; *Mississippi*, Preamble to Constitution; *Missouri*, Bill of Rights, Art. I, sec. 5; *Montana*, Preamble to Constitution; *Nebraska*, Preamble to Constitution, Bill of Rights, Art. I, sec. 4; *Nevada*, Preamble to Constitution; *New Jersey*,

the universe,'[248] 'Supreme Being,'[249] 'great Legislator of the universe,'[250] 'Great Creator and Preserver of the Universe,'[251] Deity,[252]. One state, West Virginia has no such reference at all, in any terms.

Two states specifically note that "religion" is "essential to good government."[253]

Four states claim that it is a duty to worship and each makes this claim in various language: *Connecticut*, "It being the duty of all men to worship the Supreme Being, the Great Creator and

---

Preamble to Constitution, Art. I, sec. 3; *New Mexico*, Preamble to Constitution; *New York*, Preamble to Constitution; *North Carolina*, Preamble to Constitution, Art. 1, sec. 26; *North Dakota*, Constitution introduction; *Ohio*, Preamble to Constitution, Bill of Rights, Art. I, sec. 7; *Oklahoma*, Preamble to Constitution; *Oregon*, Bill of Rights, Art. I, sec. 2; *Pennsylvania*, Preamble to Constitution, Art. I, sec. 3; *Rhode Island*, Preamble to Constitution, Art. I, sec. 3; *South Dakota*, Preamble to Constitution; *Tennessee*, Constitution, Art. I, sec. 3; *Texas*, Preamble to Constitution, Art. I, sec. 6; *Utah*, Preamble to Constitution; *Vermont*, Art. Ch. I, art. 3rd; *Wisconsin*, Preamble to Constitution, Art. I, sec. 18.

246. *Alabama*, Declaration of Rights, Art. I, sec. 1; *Delaware*, Preamble to Constitution, Art. 1, sec. 1; *Indiana*, Art. 1, sec. 1; *North Carolina*, Art. 1, sec. 1; *Virginia*, Art. I, sec. 16.

247. *Alaska*, Preamble to Constitution; *Connecticut*, Preamble to Constitution; *Georgia*, Preamble to Constitution, Art. 1, sec. 2-113; *Maryland*, Art. 36, Art. 37; *Massachusetts*, Declaration of Rights, Art. III; *Michigan*, Art. II, sec. 3; *Minnesota*, Preamble to Constitution, Bill of Rights, Art. I, sec. 16; *New Mexico*, Art. II, sec. 11; *Pennsylvania*, Art. I, sec. 4; *South Carolina*, Preamble to Constitution; *South Dakota*, Art. VI, sec. 3; *Vermont*, Ch. I, art. 3rd; *Wyoming*, Preamble to Constitution.

248. *Colorado*, Preamble to Constitution; *Missouri*, Preamble to Constitution; *Washington*, Preamble to Constitution.

249. *Iowa*, Preamble to Constitution; *Massachusetts*, Declaration of Rights, Art. III; *Mississippi*, Art. 14, sec. 265; *South Carolina*, Art. 17, sec. 4; *Texas*, Art. I, sec. 4.

250. *Massachusetts*, Declaration of Rights, Art. II.

251. *New Hampshire*, Pt. I, Art. 6th.

252. *Hawaii*, Preamble to Constitution.

253. *Arkansas*, Art. 2, sec. 25; *Nebraska*, Bill of Rights, Art. I, sec. 4.

Preserver of the Universe, . . ."[254]; *Delaware*, "Although it is the duty of all men frequently to assemble together for the public worship of Almighty God . . ."[255]; *Maryland*, "That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him . . ."[256]; *Massachusetts*, "It is the right as well as the duty of all men in society, publicly, and at stated seasons to worship the Supreme Being, the great Creator and Preserver of the universe . . ."[257]257.

One state notes that citizens ought to worship. *Vermont*, "Nevertheless, every sect or denomination of christians ought to observe the sabbath or Lord's day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed word of God."[258] This is one of three references to Christianity.

Special attention should be given to the constitutions of two New England states, for their unusual features: Connecticut has the only other reference to Christianity, "No preference shall be given by law to any Christian sect or mode of worship."[259]. Yet, Connecticut goes further and directly intervenes in the internal working of religion in this wise: "But every person now belonging to such congregation, church or religious association shall remain a member thereof until he shall have separated himself therefrom, in the manner hereinafter provided. And each and every society or denomination of Christians in this state, shall have and enjoy the same and equal powers, rights and privileges: and shall have power and authority to support and maintain the ministers or teachers of their respective denominations, and to build and repair houses for public worship, by a tax on the members of any such society only, to be laid by a

254. Art. Seventh, sec. 1.

255. Art. I, sec. 1.

256. Art. 36.

257. Art. II.

258. Art. Ch. I. Art. 3rd.

259. Art. First, sec. 4.

major vote on the legal voters assembled at any society meeting, warned and held according to law, or in any other manner."[260] "If any person shall choose to separate himself from the society or denomination of Christians to which he may belong, and shall leave a written notice thereof with the clerk of such society, he shall thereupon be no longer liable for any future expenses which may be incurred by said society."[261]

New Hampshire is the only other state taking such leave, "As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay, in the hearts of men, the strongest obligations to due subjection; and as the knowledge of these is most likely to be propagated through a society, by the institution of the public worship of the Deity, and of public instruction in morality and religion; therefrom, to promote these important purposes, the people of this state have a right to empower, and do hereby fully empower, the legislature, to authorize, from time to time, the several towns, parishes, bodies corporate, or religious societies, within this state, to make adequate provision, at their own expense, for the support and maintenance of public Protestant teachers of piety, religion, and morality . . . And every denomination of Christians, demeaning themselves quietly, and as good subjects of the state, shall be equally under the protection of the law: And no subordination of any one sect or denomination to another, shall ever be established by law."[262]

> This language can leave no doubt at all that the lands are to be owned by religious entities, used by religious entities and for religious purposes relating to "God"–which appears to be anthropomorphic from the language used and the era in which the insertions were put into the constitutions.

---

260. Art. Seventh, sec. 1.

261. Art. Seventh, sec 2.

262. Pt. I, Art. 6th.

Under the statutes, the exempted property is more specifically designated and the intent is even more readily discernible.

Most states' statutes, codes and laws 'exempt from tax(ation),'[263] others exempt from assessment,[264] from ad valorem tax,[265] from real property tax,[266] from real estate taxation,[267] from all property taxation,[268] from general property tax,[269] from real and personal property tax,[270] from general taxation,[271] from all tax,[272] from taxation for state, county or local purposes,[273] from state, county and city taxation,[274] from all county and other local taxes,[275] from city utility tax,[276] from

263. *Arizona*, Revised Statutes, 42-271; *Arkansas*, Statutes, 84-206; *California*, West's Annotated Codes, Revenue and Taxation Code, Sec. 214; *Connecticut*, General Statutes, Sec. 12-81 (12); *Florida*, Statutes, Sec. 192.06; *Idaho*, Code, 63-105B; *Illinois*, Smith-Hurd Annotated Statutes, 120-500.2; *Indiana*, Burns Statutes, 64-201; *Iowa*, Code, 427.1; *Kansas*, General Statutes, 79-201; *Maine*, Revised Statutes, 91-A,10, Subsection G; *Massachusetts*, General Laws, 59-5; *Minnesota*, Statutes, 272.02; *Nevada*, Revised Statutes, 361.125; *New Jersey*, Statutes, Annotated, 54:4-3.6; *New York*, McKinney's Consolidated Laws, Real Property Tax Law, sec. 420; *North Dakota*, Century Code, Sec. 57-02-08; *Ohio*, Page's Revised Code, Sec. 5709.07; *Oklahoma*, Statutes, 68:15.2; *Oregon*, Revised Statutes, 307.140; *Rhode Island*, General Laws, 44-3-3; *South Carolina*, Code of Laws, 65-1522; *Tennessee*, Code, 67-502; *Texas*, Vernon's Civil Statutes, Sec. 7150(1); *Utah*, Code, 59-2-1; *Vermont*, Statutes, 32-3802; *West Virginia*, Code, Sec. 678; *Wyoming*, Statutes, 39-7.

264. *Maryland*, Code, 81-9 (4).

265. *Alabama*, Code, Title 51, sec. 2.

266. *Hawaii*, Revised Laws, 128-18 (3); *North Carolina*, General Statutes, 105-296.

267. *Michigan*, Statutes, 7.7.

268. *Washington*, Revised Code, 84.36.020.

269. *Wisconsin*, West's Statutes, 70.11.

270. *New Hampshire*, Revised Statues, 72:23.

271. *Colorado*, Revised Statues, 137-17.

272. *Mississippi*, Code, 9697 (d).

273. *Missouri*, Vernon's Annotated Statutes, 137.100.

274. *Maryland*, Code, 81-9 (4).

275. *Pennsylvania*, Pardon's Statutes, 5453.202.

276. *Florida*, Statutes, 167.432.

personal property tax,[277] or provides that any such property shall not be liable to tax and assessment by any county or other political sub-division of the state.[278]

The general categories of exemption are then first listed: all property,[279] property,[280] any property,[281] real property,[282] all property, real and personal,[283] all real and personal property,[284] property, real or personal,[285] property, real and personal,[286] real and personal property,[287] all real and tangible personal property,[288] personal property,[289] all personal property.[290]

Within these general categories, further delimiting classifications develop: all churches,[291] churches,[292] church prop-

277. *North Carolina*, 105-297.

278. *Delaware*, Code, Sec. 9-8103.

279. *Illinois*, Sec. 120-500.2; *Minnesota*, Sec. 272.02; *Oklahoma*, Sec. 68:15.2; *South Carolina*, Sec. 65-1522; *Washington*, Revised Code, 84.36.020.

280. *California*, Sec. 214; *Delaware*, Code, Sec. 908103; *Hawaii*, Revise Laws, 128-18 (3); *Idaho*, Sec. 63-105B; *Wisconsin*, West's Statutes, Sec. 70.11.

281. *Texas*, Sec. 7150(1).

282. *New York*, Sec. 420; *Vermont*, Sec. 3203802.

283. *Alabama*, Code, Title 51, sec. 2; *Missouri*, Vernon's Annotated Statutes, Sec. 137.100 (6); *South Carolina*, Sec. 65-1522(4); *West Virginia*, Sec. 678.

284. *Mississippi*, Code, Sec. 9697 (d).

285. *Alabama*, Title 51, sec. 2.

286. *Colorado*, Revised Statutes, Sec. 137-17.

287. *Maine*, Sec. 91-A, 10, Subsection I; *Tennessee*, Sec. 67-502;

288. *Kansas*, Sec. 79-201(2).

289. *Connecticut*, Sec. 12-81 (12); *New Hampshire*, Revised Statutes, Sec. 77.8.

290. *North Dakota, Sec. 57-02-08.*

291. *Minnesota*, 272.02; *Pennsylvania*, 5454.202; *Washington*, 84.36.010.

292. *Arizona*, 42-271; *Minnesota*, 290.05; *Nevada*, 361.125.

erty,[293] chapels (other than marriage chapels),[294] houses (used as synonym for church),[295] all houses (used as synonym for church),[296] actual places,[297] all meetinghouses,[298] other regular places,[299] all buildings,[300] any building,[301] buildings,[302] every building or part thereof,[303] a building,[304] other buildings,[305] other additional buildings,[306] any recreational hall,[307] business offices,[308] office,[309] all burying grounds,[310] convents,[311] monastaries,[312] religious institutions.[313]

The exempted properties are exempt when used as,[314] used

---

293. *Minnesota*, 272.02.

294. *Nevada*, 361.125.

295. *Connecticut*, 12-81-(13); *Maine*, 91-A,(10); *Massachusetts*, 59-5; *Maryland*, 81-9 (4); *Minnesota*, 272.02; *New Hampshire*, 72:23; *Ohio*, Sec. 5709.07.

296. *Arkansas*, 84-206; *Florida*, Sec. 192.06; *Michigan*, 7:7; *North Dakota*, Sec. 57-02-08; *Oregon*, 307.140; *South Carolina*, 65-1522 (3).

297. *Texas*, Sec. 7150 (1);

298. *Pennsylvania*, 5453.202.

299. Ibid.

300. *Kansas*, 79-201 (1); *New Jersey*, 54:4-3.6.

301. *Colorado*, 137-17.

302. *Iowa*, 427.1; *Maryland*, 81-9 (4); *New Hampshire* 72:23; *North Carolina*, 105-296; *Rhode Island*, 44-3-3; *South Carolina*, 65-1522 (4); *Utah*, 59-2-1; *Wyoming*, 39-7.

303. *Indiana*, 64-201.

304. *New Jersey*, 54:4-3.6.

305. *North Dakota*, Sec. 57-02-08.

306. *Arizona*, 42-271; *Nevada*, 361.125.

307. *Oregon*, 307.140.

308. *Idaho*, 63-105B.

309. *North Carolina*, 105-296.

310. *Florida*, Sec. 192.06.

311. *New Hampshire*, 72:23.

312. Ibid.

313. *South Carolina*, 65-1522 (2).

314. *Vermont*, 32-3802.

for,[315] must be used for,[316] intended and ordinarily used for,[317] used solely for,[318] actually so used (to that extent only),[319] actually used for,[320] used solely for,[321] used in conjunction therewith,[322] used in connection with,[323] used and set apart for,[324] wholly used for,[325] must be used wholly for,[326] exclusive use as,[327] used exclusively as,[328] used exclusively for,[329] occupied and used exclusively to,[330] used exclusively and directly for,[331] used solely and exclusively for,[332] used exclusively for and in connection with,[333] actually and exclusively used for,[334] actually and regularly used exclusively for,[335] actually and regularly and exclusively used for,[336]

315. *Arizona*, 42-271; *Hawaii*, 128-18 (3); *Nevada*, 361.125; *New Jersey*, 54:4-3.6; *North Dakota*, Sec. 57-02-08.

316. *Massachusetts*, 59-5;

317. *North Dakota*, Sec. 57-02-08.

318. *California*, 214; *Florida*, Sec. 167.432; *Iowa*, 427.1; *Ohio*, Sec. 5709.07; *South Carolina*, 65-1522;

319. *Washington*, 84.36.020.

320. *Indiana*, 64-201.

321. *Colorado*, 137-17.

322. *Illinois*, 120-500.2.

323. *Idaho*, 63-105B.

324. *Indiana*, 64-201.

325. *North Carolina*, 105-296.

326. *Washington*, 84.36.020.

327. *Texas*, Sec. 7150 (1).

328. *Kansas*, 79-201.

329. *Alabama*, Title, 51, sec. 2; *Arkansas*, 84-206; *Illinois*, 120-500.2; *Maryland*, 81-9 (4); *North Dakota*, Sec. 57-02-08; *Rhode Island*, 44-3-3; *Utah*, 59-2-1; *West Virginia*, Sec. 678; *Wyoming*, 397.

330. *Tennessee*, 67-502.

331. *Oklahoma*, 68:15.2.

332. *Colorado*, 137-17.

333. *Idaho*, 63-105B.

334. *New Jersey*, 54:4-3.6.

335. *Missouri*, 137.100.

336. *Kansas*, 79-201.

occupied as such,[337] occupied for,[338] actually occupied as,[339] dedicated to,[340] devoted to,[341] primarily and immediately for ... inter alia,[342] occupied and used solely for,[343] operated for.[344]

The entire issue of this case is rooted in *why* these exemptions are given. The language is explicit and can be given no other meaning than the intent here speaking loud and clear. The basis of every exemption is to aid, promote, encourage, benefit, and assist an end use of the properties in question for: religious worship,[345] public worship,[346] religious services,[347] religious purposes,[348] worship,[349] stated worship,[350] religious use,[351] religious meetings,[352] divine worship,[353] church pur-

337. *Idaho*, 63-105(B).

338. *Rhode Island*, 44-3-3.

339. *New Jersey*, 54:4-3.6.

340. *Washington*, 84.36.020.

341. *New Jersey*, 54:4-3.6.

342. *West Virginia*, Sec. 678.

343. *Maine*, 91-A, 10, Subsection I.

344. *California*, sec. 214.

345. *Alabama*, Title 51, sec. 2; *Arizona*, 42-271; *Colorado*, 137-17; *Connecticut*, sec. 12-81(13); *Indiana*, 64-201; *Maine*, 91-A, 10; *Massachusetts*, 59-5; *Missouri*, 137.100 (6); *Nevada*, 361.125; *New Jersey*, 54:4-3.6; *North Carolina*, 105-296; *Rhode Island*, 44-3-3; *Utah*, 59-2-1; *Wyoming*, 39-7.

346. *Arkansas*, 84-206 (1); *Florida*, Sec. 192.06; *Idaho*, 63-105B; *Kansas*, 79-201 (1); *Maryland*, 81-9 (4); *Michigan*, 7.7; *New Hampshire*, 72.23; *North Dakota*, Sec. 57-02-08; *Ohio*, Sec. 5709.07; *Oregon*, 307.140; *Texas*, Sec. 7150 (1).

347. *North Dakota*, Sec. 57-02-08.

348. *California*, 214; *Connecticut*, sec. 12-81 (12); *Florida*, Sec. 192.06; *Illinois*, 120-500.2; *Indiana*, 64-1; *Kansas*, 79-201 (1); *New Jersey*, 54:4-3.6; *North Dakota*, Sec. 57-02-08; *Rhode Island*, 44-3-3; *Washington*, 84.36.020; *Oklahoma*, 68.15.2 (within the state).

349. *Minnesota*, 272.02.

350. *Pennsylvania*, 5453.202.

351. *Indiana*, 64-201.

352. *Kansas*, 79-201.

353. *West Virginia*, Sec. 678.

poses,[354] their appropriate objects,[355] to carry out its purposes,[356] any activity it conducts,[357] including incidental activity,[358] publication of religious material.[359]

Every state makes a requirement that the entity owning or using be one of a religious nature, specifically, any church,[360] a church,[361] a recognized church,[362] churches,[363] a church organization,[364] church conferences,[365] church societies,[366] ecclesiastical body,[367] religious society,[368] any religious society,[369] strictly religious society,[370] recognized religious society,[371] religious societies,[372] religious bodies,[373] any religious body,[374] religious associations,[375] any religious association,[376]

354. *Hawaii*, 128-18(3); *Washington*, 84.36.010.

355. *Iowa*, 427.1.

356. *Tennessee*, 67-502.

357. *South Carolina*, 65-1522 (4) in respect to publication of religious material.

358. *Hawaii*, 128-18 (3).

359. *South Carolina*, 65-1522 (4).

360. *Delaware*, Sec. 8-501.

361. *Kansas*, 79-201; *Michigan*, 7.7; *New York*, Sec. 462; *Texas*, Sec. 7150(1).

362. *Florida*, 167-432.

363. *Illinois*, 120-500.2; *Vermont*, 32-3802; *Wisconsin*, 70.11 (1).

364. *Colorado*, 137-17.

365. *Vermont*, 32-3802 (1).

366. Ibid.

367. *Mississippi*, 9697 (d).

368. *Delaware*, Sec. 8-501; *Maine*, 91-A, 10, Subsection G.

369. *Idaho*, 63-105B; *Mississippi*, 9697 (d).

370. *Texas*, Sec. 7150(1).

371. *Nevada*, 361.125.

372. *Iowa*, 427.1.

373. *North Carolina*, 105-296; *South Carolina*, 65-1522 (4).

374. *South Carolina*, 65-1522 (4).

375. *Wisconsin*, 70.11(1).

376. *New Jersey*, 54:4-3.6.

non-sectarian religious association,[377] religious groups,[378] religious institutions,[379] religious organizations,[380] a minister of the gospel, priest or rabbi,[381] a congregation thereof,[382] any regularly recognized and constituted denomination, creed or sect,[383] religious corporations,[384] any religious corporation,[385] recognized religious corporation,[386] enumerated church and religious bodies,[387] associations,[388] officer of a religious denomination.[389]

The land given tax exemption is meagre in description: and lot,[390] lots,[391] and lots on which they are situated,[392] together with the lots upon which the same are situated,[393] lots or parts of lots upon which such buildings are erected,[394] and the lots of ground on which they stand used therewith and necessary thereunto,[395] any church grounds,[396] with the grounds thereto

377. *Washington*, 84.36.020.

378. *Iowa*, 427.1.

379. *Illinois*, 120-500.2; *Iowa*, 427.1; *Tennessee*, 67-502.

380. *Connecticut*, Sec. 12-81 (14); *Maine*, 91-A. 10, Subsection I; *Massachusetts*, 59-5; *New York*, Sec. 420; *North Dakota*, Sec. 57-02-08; *Oklahoma*, 68:15.2; *Oregon*, 307.140.

381. *New York*, Sec. 460. (an actual resident of this state).

382. *Mississippi*, 9697 (d).

383. *New Hampshire*, 72:23. (organized or incorporated in this state).

384. *Minnesota*, 317.66.

385. *Idaho*, 63-105B; *New Jersey*, 54:4-3.6.

386. *Nevada*, 361.125.

387. *South Carolina*, 65-1523. (hospitals, rest homes, etc.)

388. *Texas*, Sec. 7150 (1).

389. *New York*, Sec. 436.

390. *New Jersey*, 54:4-3:35.

391. *Utah*, 59-2-1; *Wyoming*, 39-7.

392. *Florida*, Sec. 192.06; *Oregon*, 307.140; *South Carolina*, 65-1522 (3).

393. *North Dakota*, Sec. 57-02-08.

394. Ibid.

395. *Nevada*, 361.125.

396. *Hawaii*, 128-18 (3).

annexed necessary for the and enjoyment of the same,[397] and the grounds attached to such buildings necessary for the proper occupancy, use and enjoyment of the same,[398] the grounds attached to such buildings necessary for proper use and occupancy,[399] and the grounds appurtenant to such houses, buildings and parsonages and necessary for the respective uses thereof,[400] and the lands thereto appertaining,[401] with land on which they stand,[402] together with adjacent lands reasonably necessary for use of such building,[403] and the land and improvements appurtenant thereto and used therewith,[404] and their land,[405] whether the property consists of one tract or more,[406] whether or not contiguous to and a part of other property,[407] limited to what is reasonably necessary,[408] and the land upon which they stand and immediately surrounding the same, to an extent not exceeding one acre,[409] and land ... limited to one acre,[410] ground attached thereto reasonably necessary for proper occupancy and use in no event more than one acre,[411] ground actually occupied by them, up to two acres,[412] all lands ... up to two acres in any one case,[413] all

397. *Pennsylvania*, 5453.202.

398. *Arkansas*, 84-206 (1).

399. *Ohio*, Sec. 5709.07.

400. *Maryland*, 81-9 (4).

401. *New Hampshire*, 72.23.

402. *Connecticut*, 12-81 (13); *Michigan*, 7.7.

403. *North Carolina*, 105-296.

404. *Arizona*, 42-271.

405. *North Carolina*, 105-296.

406. *North Dakota*, Sec. 57-02-08.

407. *Wisconsin*, 70.11.

408. *Texas*, Sec. 7150 (1).

409. *Rhode Island*, 44-3-3.

410. Ibid.

411. *Texas*, Sec. 7150 (1).

412. *South Carolina*, 65-1522 (3).

413. Ibid.

real property up to two acres,[414] and grounds thereof up to five acres,[415] the land on which (any exempt buildings are) located necessary for fair enjoyment of same, not to exceed five acres,[416] together with ground owned thereby up to ten acres in any one case,[417] the lands the buildings are on up to fifteen acres,[418] all grounds not exceeding 320 acres in extent,[419] up to $1,500,[420] and necessary land to go with it, but limited to not more than $3,000 assessed value,[421] up to $5,000,[422] to value of $6,000,[423] limited to $10,000,[424] up to $25,000.[425]

That the property is only for religious use is indicated by a designation of pews, hymnals (books), slips, being also exempt; including pews and furniture,[426] all pews and furniture therein,[427] the pews, slips and furniture therein,[428] their pews, furniture and equipment,[429] including vestries and the pews and furniture within,[430] furniture therein, pews,[431] pews and furniture up to $10,000 for each parsonage,[432] and households

414. *North Dakota*, Sec. 57-02-08.
415. *Washington*, 84.36.020.
416. *New Jersey*, 54:4-3.6.
417. *Kansas*, 79-201.
418. *Indiana*, 64-201.
419. *Iowa*, 427.1.
420. *New York*, Sec. 460.
421. *Colorado*, 137-17.
422. *New Jersey*, 54:4-3.6.
423. *Maine*, 91-A, 10 Subsection G.
424. *Rhode Island*, 44-3-3.
425. *New Jersey*, 54:4-3.35.
426. *Indiana*, 64-201.
427. *Florida*, Sec. 192.06.
428. *Oregon*, 307.140.
429. *Connecticut*, 12-81 (13).
430. *Maine*, 91-A, 10.
431. *Michigan*, 7.7.
432. *Massachusetts*, 59-5.

and furniture pertaining thereto,[433] the furniture and personal property in,[434] the furniture contained therein,[435] furniture,[436] with their furniture and equipment,[437] and contents thereof,[438] suitable articles of personal property,[439] and personal property not exceeding $6,000 in value,[440] the books and furniture therein,[441] with furniture and books therein contained,[442] and their private libraries,[443] libraries of ministers of the gospel,[444] library and office equipment of a minister of any religion actively engaged in ministerial work in the state where such property is used by minister in his work,[445] and personal property therein used by ministers engaged in full time work in the care of the churches of the fellowship within the state,[446] all religious books kept for sale by ministers of the gospel and colporteurs.[447]

However, the use must be: not for profit,[448] not operating for profit,[449] must not be for profit,[450] not held for profit,[451]

433. *West Virginia*, Sec. 678.

434. *New Jersey*, 54:4-3.6.

435. *Maryland*, 81-9 (4).

436. *North Carolina*, 105-297.

437. *Arizona*, 42-271; *Nevada*, 361.125.

438. *South Carolina*, 65-1522.

439. *Iowa*, 427.1.

440. *Maine*, 91-A, 10 Subsection G.

441. *Ohio*, Sec. 5709.07; *Texas*, Sec. 7150 (1); *South Carolina*, 65-1522.

442. *Kansas*, 79-201 (1).

443. *North Carolina*, 105-297.

444. *Alabama*, Title 51, sec. 2.

445. *Oklahoma*, 68:15-2.

446. *Vermont*, 32-3802.

447. *Alabama*, Title 51, sec. 2.

448. *Mississippi*, 9697 (d).

449. *New Jersey*, 54:4-3.6.

450. Ibid.

451. *Florida*, Sec. 192.06.

not held for investment,[452] if no income is derived therefrom,[453] yielding no revenue,[454] and not leased or otherwise used with a view to pecuniary profit,[455] and not leased or otherwise used with a view to profit,[456] as long as the property is not used or held for profit,[457] if not leased or otherwise used for profit,[458] let for rent or hire or for use of business purposes, shall not be exempt from taxation, notwithstanding the income from such property shall be used exclusively for education, religious or charitable purposes,[459] If a portion of the realty is used to produce income, even if the income is applied to exempt purposes the exemption is lost, though it subsists on the remaining property,[460] the exemption is lost when the property is used for other than church purposes and valuable consideration is received therefore,[461] where property otherwise exempt is used in part for non-exempt purposes, a pro-rata exempt shall apply,[462] if only a part of property is used for religious purposes, then a pro-rata exemption applies,[463] but any building being a house of worship which shall be rented for non-religious purposes loses exemption,[464] but so much of any parsonage as is rented is taxable,[465] if principal or income used for religious or charitable purposes (then, tax exempt),[466] any

452. *Delaware*, Sec. 9-8103.

453. *South Carolina*, 65-1522.

454. *Texas*, Sec. 7150 (1).

455. *Iowa*, 427.1.

456. *Arkansas*, 84-206; *Illinois*, 120-500.2.

457. *Arizona*, 42-271.

458. *Kansas*, 79-201 (1); *Ohio*, Sec. 5709.07.

459. *Alabama*, Title 51, Sec. 2.

460. *Hawaii*, 128-18 (4).

461. *Nevada*, 361.125.

462. *Wisconsin*, 70.11 (1).

463. *North Carolina*, 105-296.

464. *Florida*, Sec. 192.06.

465. *Maine*, 91-A, 10, Subsection G.

466. *Connecticut*, Sec. 12-81 (12).

part of any house of public worship which is kept or used as a store or shop or for any purpose other than for public worship or schools shall be taxed,[467] may be supported in part by fees and charges received from beneficiaries using said property, provided the building is wholly controlled by and entire income is used for religious purposes,[468] is allowed an exemption for all property up to $2,500 which is not used solely and directly for religious purposes,[469] exemption does not extend to leaseholds,[470] provided rent is not paid for such land or improvements,[471] the property exempt from tax being limited to realty exclusive of burying grounds,[472] parking lots used for church purposes are exempt. However, special claim for exemption must be filed,[473] if principal or income is used for religious, benevolent or charitable purpose,[474] vacant lands up to forty acres bought with bona-fide intention to erect structures for religious use thereon,[475] to the extent (actually so used),[476] and none other,[477] and, no more land than is necessary,[478] on land on which there are no structures suitable for religious purposes, but on which such buildings are contemplated,[479] If religious property is leased out, it loses its exemption, regardless of whether income so received is applied to religious purposes. If only a part of premises are used for religious purposes, then only that portion is exempt.[480]

467. *Oregon*, 307.140.
468. *New Jersey*, 54:4-3.6.
469. *Oklahoma*, 68:15.2.
470. *Ohio*, Sec. 5709.07.
471. *Arizona*, 42-271.
472. *Hawaii*, 128-18 (4).
473. *Oregon*, 307.140.
474. *Massachusetts*, 59.5.
475. *Indiana*, 64-201.
476. *Washington*, 84.36.020.
477. *Alabama*, Title 51, Sec. 2.
478. *Montana*, Sec. 84-202.
479. *Connecticut*, Sec. 12-88.
480. *Tennessee*, 67-502.

Whereas the Constitutions of most states do not include provisions for parsonages, the statutes enlarge the general exemptions in order to include them: any parsonage,[490] any parsonage or dwelling,[491] every parsonage,[492] parsonages,[493] church parsonages,[494] parsonage or a parsonage,[495] residence,[496] dwelling including usual outbuildings,[497] dwelling houses,[498] dwelling place,[499] house,[500] parish house,[501] housing,[502] other housing facilities,[503] any building.[504]

But such parsonages have restricted occupants and use. They are for a bishop,[505] for a churchman,[506] officiating clergyman,[507] its minister,[508] ministers,[509] district supervisor of

---

490. *Idaho* 63-1-5B; *Maryland*, 81-0 (4).

491. *Kansas*, 79-2-1 (1).

492. *Florida*, Sec. 192.06.

493. *Illinois*, 120.550.2; *Hawaii*, 128-18 (3); *Nevada*, 361.125; *Vermont*, 32-3802; *Washington*, 84.36.020; *West Virginia*, Sec. 678.

494. *New Hampshire*, 72.73; *Wyoming*, 39-7.

495. *Kansas*, 79-201; *Maine*, 91-A, 10, Subsection G; *Michigan*, 7.7; *New Jersey*, 54:4-3.6; *South Carolina*, 65-1522.

496. *Colorado*, 137-17; *New Jersey*, 54:4-3.6; *New York*, Sec. 462; *North Carolina*, 105-296, *North Dakota*, Sec. 57-02-08.

497. *North Dakota*, Sec. 57-02-08.

498. *Connecticut*, Sec. 12-81 (14); *Rhode Island*, 44-3-3.

499. *Texas*, Sec. 7150 (1).

500. *Colorado*, 137-17.

501. *New Hampshire*, 72.73.

502. *Wisconsin* 70.11 (1).

503. *Illinois*, 120.550.2.

504. *Colorado*, 137-17.

505. *North Dakota*, Sec. 57-02-08.

506. *Colorado*, 137-17.

507. *New Jersey*, 54:4-3.6; *New York*, Sec. 462 (where owned by the church); *Rhode Island*, 44-3-3.

508. *North Carolina*, 105-297.

509. *Texas*, Sec. 7150 (1).

religious organization,[510] occupied by their pastors,[511] occupied by its minister,[512] actually used by clergymen,[513] for ministers, their spouses, children, and domestic employees performing the duties of their vocation as ministers at such church or religious institution,[514] pastors, their ordained assistants, members of religious orders and communities, and ordained teachers,[515] the bishop, priest, rector or other minister in charge of the services of the church,[516] a minister of the gospel, priest, or rabbi, an actual resident of the state, who is engaged in work assigned to him by the church or who is unable to perform such work due to impaired health or is over seventy.[517]

Just how the states feel in respect to giving money to religious establishment is reflected in the prohibition of any tax money or school money being directed to the support of any sectarian school. The prohibition exists in every state,[518] but Rhode Island, Vermont and West Virginia.

---

510. *New Jersey*, 54:4-3.6.

511. *New Hampshire*, 72:23.

512. *Kansas*, 79-201.

513. *Connecticut*, 12-81 (14).

514. *Illinois*, 120-500.2.

515. *Wisconsin*, 70.11 (1).

516. *North Dakota*, Sec. 57-02-08.

517. *New York*, Sec. 460.

518. Constitution: *Alabama*, Art. 14, sec. 263; *Alaska*, Art. VII, sec. 1; *Arizona*, Art. 9, sec. 10; *Arkansas*, Art. 14, sec. 2; *California*, Art. 9, sec. 7, 8; *Connecticut*, Art. 8, sec. 2; *Delaware*, Article 10, sec. 4; *Florida*, Declaration of Rights, Art. 6, Art. 12, sec. 13; *Georgia*, Art. 1, sec. 2-114; *Hawaii*, Art. IX, sec. 1; *Idaho*, Art. 9, sec. 5; *Illinois* (Statute), Title 122:22-10; *Indiana*, Art. 1, sec. 6; *Iowa*, (Statute) Sec. 343.8; *Kansas*, Art. 6, sec. 8; *Maryland*, Art. VIII, sec. 8; *Massachusetts*, Art. 18 (Articles of Amendment); *Michigan*, (Statute) Sec. 15.3366; *Minnesota*, Art. 8, sec. 2; *Mississippi*, Art. 8, sec. 208; *Missouri*, Art. 9, sec. 8; *Montana*, Art. V, sec. 35; Art XI, sec. 8; *Nebraska*, Art. VII, sec. 11; *Nevada*, Art. 11, sec. 10, (Statutes), Sec. 387.045; *New Hampshire*, Part 2, Art. 83; *New Jersey*, Art. 8, sec. 4, par. 2; *New Mexico*, Art. XII, sec. 3; *New York*, Art. II, sec. 4; *North Carolina*, Sec. 115-275; *North Dakota*, Art. VIII, sec. 152; *Ohio*,

There has been a general rule of strict construction of statutes and constitutional provision, reiterated in a majority of court decisions. Taxation is the normal condition and tax exemption is the abnormality, so that the leaning has been toward the inclusion in the tax base. The religious organization desiring the exemption usually must make the application for it and assume the burden of proof of its contentions. The case must be brought into the terms of the statute or constitutional provision. The courts generally refuse to extend the statute beyond its clear meaning. Generally the courts do not discriminate in favor of any sect unless that sect is a very powerful political one in the community and such decisions are very transparent in the reading.

It must be recognized that the object of the tax exemption was to aid financially enfeebled churches with the bare necessary means to their survival. As our society has moved into the cultural era of affluence the churches have moved with it, and this financial aid is no longer necessary to their survival. More recent cases reflect this attitude.

The cases generally fall into easy classification. The prohibition against gain by the church has held against a number of onslaughts against it. Where 15% of church's building is rented commercially, exemption is lost, (259 Mo. 233). Where a lot belonging to church adjoining its property is rented out as a store, it is not exempt, (148 Ky. 580). Property owned by a church and rented out does not retain the tax exemption, (206 Ala. 632). Land owned by church and rented for profit is taxable, although the net income from land is used for religious purposes, (Iowa, Op. Atty. Genl. 1923-04). Property owned by church but used as rented apartments on which rent was paid is not tax exempt, (110 S. E. 2d 11, Georgia). House and lot

---

Art. VI, sec. 2; *Oklahoma*, Art. 2, sec. 5; *Oregon*, Art. 1, sec. 5; *Pennsylvania*, Art. 3, sec. 18, Art. 10, sec. 2; *South Carolina*, Art 11, sec. 9; *South Dakota*, Art. VI, sec. 3; *Tennessee*, Art. 11, sec. 11; *Texas*, Art. 1, sec. 7; *Utah*, Art. X, sec. 13; *Virginia*, Art. 141; *Washington*, Amendments 4 and 34; *Wisconsin*, Art. 1, sec. 18; *Wyoming*, Art. 1, sec. 9.

owned by church for which it collects rent which it uses for church purposes is not exempt, (38 N. M. 403). A school run by a church to inculcate its religious tenets in pupils, not open to the public, is not exempt because it is neither a charity nor a religious enterprise, (148 O. S. 654). Church organized a subsidiary corporation to publish religious books and claimed the realty of the subsidiary as exempt as a charitable enterprise. Held: its operations must be wholly religious, if any non-religious, even charitable elements come in, it loses its exemption, and all its property is taxable, even the religious part, (355 Mo. 257). Farm used by church to raise grain for its aged and needy members was not exempt, because a proper religious purpose is not the distribution of food to its members, (75 Idaho 162). Religious institution's realty used for parking lots, cafeteria for its employees was not exempt even though not conducted for profit; it was not a religious operation, (360 S. W. 2d 458 Tennessee). Where church property consisted of building, automobiles, trailers, tents where chief business was preparation, recording and broadcasting of religious programs, and, in the building a fifteen minute religious service was held five days a week, held not entitled to exemption, (341 S. W. 2d 467, Texas). A publishing house devoted solely to publication of religious books using all profits for this purpose, held not religious group entitled to exemption, (123 N. E. 697, Indiana). Operation for profit will deny this exemption under law (religious hospital); profit means not that there is or may be a profit, but where the operation is undertaken for the purpose of rendering a profit. (290 P. 2d 275, California). A religious summer camp is certainly not a place of worship, (201 P. Super. 5). The most recent case is that of Temple Beth Sholom which leased 12½ acres of land to the Roslyn Summer Day Camp in which Supreme Court Justice Howard T. Hogan on August 20, 1969 in New York ruled that religious institutions lose their tax exempt status on any part of their property leased for commercial use.

Even more stringent rules apply in respect to personal property. Personal property of church primarily used for gain

and reinvestment not exempt, (130 Miss. 637). A trust fund devoted to propagation of Christianity is not exempt, (119 Ky. 208). Endowment fund administered by religious group devoted wholly to relief of retired ministers, their widows and orphans, is not tax exempt. (Op. Atty. Genl, Iowa 1930). A provision of the Intangible Property Tax Act exempting individual's intangibles owned, held or used exclusively for 'religious purposes' was unconstitutional, (44 Ariz. 379). Where certain land was exempted while owned by a church organization, the fund realized by a sale of such land is subject to taxation, (109 Me 22). Where a charter permitted a church corporation to hold property in amount of $350,000 exempt from taxation and such property was originally worth less than that sum has since become worth almost a million, held: subject to taxation insofar as it exceeded the sum fixed by charter (192 Mass 412).

Courts generally have held that church property is subject to assessments. Local assessment not included in exemption (248 Ala. 227). Church property is subject to improvement assessments, (192 Ark. 908). Church property is not exempt from assessment for street paving, (Georgia, 13 S. E. 252). The exemption does not extend to special assessment of cities, (300 Mich. 80). A church was liable to assessment for paving a street in front of its property, (165 Pa. St. 475). Churches are not, and may not be, exempt from assessments, (105 S. C. 303). Constitutional exemption does not apply to special assessments, (40 Utah 83). Exemptions do not extend to local levies, (35 Cal. 2d 760), applies only to ad valorem taxes and not special assessments, (Op. Atty. Genl. La., 1940-42, p. 3999). Includes direct ad valorem taxes only, (233 Ala. 138). Tax exemption is applicable only to realty, (246 Ala. 486).

Vacant lands held by a church generally are not exempt. Vacant lots bought by church authorities and held in private ownership, in view of increase of city, and with intention of possibly erecting a church thereon when needed, are not exempt as 'places of worship,' (36 La. Ann 804). This

exemption extends only to such property as is actually and exclusively used . . . and does not include property that is only intended to be so used in the future, (13 Mont. 559). This exemption covers only actual use, and not intentional future use of property for religious purposes, (113 Calif. A. 2d 392). Vacant lot upon which it is proposed to build a church building, which would be exempt, is not exempt, (19 C. D. [Ohio] 249). Unused church lot not exempt, (144 Miss. 360). A vacant lot owned by a church does not qualify, (86 Ar. 205). A vacant lot intended for eventual religious purpose but leased to city in interim is not tax exempt, (121 Colo. 470). Empty land on which were held church services not exempt, because unimproved land is not statutorially exempt, (19 N. J. Misc. 232). Vacant land purchased with a view to building church buildings in future was not exempt, (26 N. J. Misc. 123). Vacant lot intended to be built on by church is not exempt, (178 Mass. 404). Large open land owned by church with pond where fish are caught and consumed by churchmen is not exempt, (97 N. H. 396). Vacant tract of 40 acres, owned by a religious group who hoped some day to build a church or school there and which was occasionally used by another school as a football field held not exempt, (Iowa, Op. Atty. Genl. 1955).

Property held by a church under a lease from another church is not exempt, the lessor church deriving a profit from lease, (31 Ohio L. R. 567). Property leased to a church is not exempt, even though leased for religious purposes, (118 Fla. 771). Lands conveyed to a religious society are exempt from taxes in part only as to portion used for religious purposes, and when church building burned and the members disbanded only the portion used as a cemetery was exempt, (212 Ark. 924). It is beyond legislative competence to exempt from taxation more than property used as place of public worship, (91 A. 2d 372, Penna.) Specific legislative tax exemption of wharf owned by church held invalid, as an arbitrary distinction and improper state aid of church, (106 Md. 281). Church parking lot not exempt, (138 Ohio S. 246). Parking lot of church is exempt, (35 N. J. Super 67).

Courts have constantly reiterated that the basic test for exemption is the use of church property, (89 N.Y.S. 2d 300, aff'd N.Y. 716). Exemption is based solely on use of premises and not on ownership, (59 Neb. 571). Use of property is test to right of exemption, (109 Neb. 106). Church exemption does not depend upon ownership of property but upon the purpose to which property is put, (La. Op. Atty. Genl. 1922-1924, p. 755). The property, and not its revenues, must be so applied before exemption will attach, (57 Ark. 445). The exemption will be determined on the primary use, not the secondary or incidental use, (409 Ill. 376). Whether or not use is religious is a question of fact for the taxing officials, (Fla. Op. Atty. Gen. 061-104, June 30, 1961).

Originally the parish houses were not exempt on the theory that the use of the property and not the ownership determined the question of exemption. A parsonage is used as a residence which was at first seen as a secular purpose. Parsonage is subject to taxation, (32 N. J. L. 360). A parsonage erected by a religious society on their church lot was liable to taxation as real estate, (41 N. J. L. 117). A building used by a religious society as a rectory or parsonage was subject to taxation, (30 La. Ann. 259). A parsonage erected for the convenience and accommodation of the pastor of a church is not exempted, (38 Ind. 3). A statute exempting a parsonage from taxation held invalid under Illinois constitution which prohibits the Legislature from exempting from taxation property not used exclusively for religious purposes, (232 Ill. 158). Parsonage liable to taxation although standing on the same parcel of land as the church edifice, 22 Abb. N. C. (New York) 52. Residence of priests, bishops, parson, not exempt (in a series of cases, see for example 25 Ohio St. 229). A house converted to a church, with parlor floor used for services of a church and Sunday school, while pastor or minister in charge lives with his family on the second floor, not used exclusively as a church and not exempt, (58 Misc. N. Y. 639).

The usual church encroachment into this area developed with the religious community winning passage of many statutes

giving exemptions.[519] Cases began shortly to reflect this: Parsonage is exempt, (158 Minn. 48). Phrase 'church property' includes rent-free residence furnished to executive director of foreign missions of church, (22 N. W. 2d 642 Minn.). Church owned residence located near but not on church grounds and occupied by church's minister as part of his salary is exempt, (121 N. W. 2d 131, Iowa). Caretaker resided on top floor of 1½ story house used for religious worship; entire building held exempt, (151 Ohio S. 70). Living quarters of priest at lay retreat are exempt, (35 Cal. 2d 760). A rest home for retired Christian missionaries is a religious use and exempt, (151 Calif. A. 2d. 523). Home for retired clergyman is exempt (religious corporation subject to control of a foreign corporation), (41 N. J. Super. 504). House and lot for visiting bishops are exempt. (91 Mo. 671). Retreat buildings used ten weeks per year held exempt as place of worship, (191 Md. 441). Caretaker's house on church property is exempt as property occupied for purposes of church (97 N.H. 396).

The issue of tax exemption for religion is many faceted, and arguments concerned with each aspect tend to become stereotyped. All of the arguments, on both sides, are therefore presented here for review.

For Establishment and Special Privilege of Tax Exemption:

So long as the tax exemption deals equally with all religions, without discrimination, the constitution is not violated.

For Disestablishment:

We must recognize that the exemption is a subsidy from the state in direct proportion to the amount of taxable property which the religious organization owns. The exemptions are not, therefore, equally applicable to all religions, or all sects of the Christian religion. Exemptions fall with largess upon the largest land holders. The richer denominations have a clear advantage over the poorer ones. Members of the poorer congregations are

519. See page 59.

put in the position of contributing to the support of the richer denominations by an increased rate of taxation upon their individual property.

For Special Privilege:

If certain functions of the religious organization which is exempted were not provided by some such private institution or organization, the ultimate burden of rendering them would fall upon the state.

For Disestablishment:

If the churches engage in eleemonsynary activities, they can qualify for exemptions to the extent of that pro-rata activity under the existing laws which exempt other such organizations. In 1968, Vice President Hubert Humphrey reminded the General Assembly of the National Council of Churches in a speech that the Protestant and Orthodox churches of the nation spend "only 41 cents a month for everyone who belongs to a church in America" on services to those outside the church.[520]

For Special Privilege:

The sum involved is negligible, insignificant. If the churches were taxed the general tax rate would not decline for the rest of the tax payers.

For Disestablishment:

On the local level there is a real possibility of reducing the real estate tax rate. The National Conference of Christians and Jews, studying three American cities, concluded that if all exempt church property were placed on tax rolls in Nashville, Tennessee, tax revenue would be increased 6.4%, in Washington, D.C. 4.6% and in Boston, 3%. They note further that in Pennslyvania churches own 14% of total taxable property.[521]

---

520. Balk, Alfred, *The Religion Business*, Richmond, Va., John Knox Press, 1968, p. 26.

521. Tanner, Andrew D., *The Question of Tax Exemption for Churches*, N.Y. National Conference of Christians and Jews, 1963, p. 18.

The assessed value of all of New York City, its five boroughs, Manhattan, Bronx, Queens, Kings (Brooklyn), Richmond (Staten Island) is $47 billion. Churches in America own probably twice this much according to the CBS survey.[522] All tax entities are in search of tax dollars as the taxable base constricts. Revenue which is needed by the total community is lost through religious exemption. Religion should divulge its total holdings before it hides behind the claim it presents in this argument.

For Special Privilege:

Taxing churches would be calamitous financially for churches.

For Disestablishment:

Churches have not come forward to put their actual financial conditions on public record so that an objective appraisal of the effect of a tax can be made.

Churches have made deep inroads into the capitalist community with vast stock holdings, and business ownership. When a Wall Street investment company attempted a study of securities held by churches three years ago, it counted up to nearly three billion dollars before concluding that it was an impossible task. Three billion dollars worth of security, at a modest 5% yield brings in $150 million in one year. Mortimer Caplin, the Commissioner of Internal Revenue in 1962 during which time the Internal Revenue Service conducted a statistical analysis of income tax returns in respect to gifts to religious organizations estimates that churches now receive $5.5 billion a year in the collection plates.[523] By comparison the following are figures of total industry incomes:

---

522. CBS report, op. cit., p. 8.

523. Ibid, p. 4.

furniture industry	$ 5.5 billion annual income[524]
leather	2.5 billion annual income
mining	5.5 billion annual income
printing	16.0 billion annual income
textiles	6.5 billion annual income

The figure of $5.5 billion is only for giving to churches and does not represent the profits from their businesses, from their property rentals, or yield from their stock holdings.

For Special Privilege:

The functions which the religious organizations perform in the community can not be done by any other agency. They render many community and charitable services to many people.

For Disestablishment:

Community services which churches and religious organizations provide are not truly public. They are mainly directed toward each sect's church members and their families. All major community services are now handled by city, county, state and federal agencies, such as welfare and relief programs, social security for disabled and aged, hospitals for the mentally ill and mentally defective, schools for the blind and deaf, child care centers and foster homes, institutions for delinquents, alcoholics, narcotics and the aged, unemployment compensation, workmen's compensation, special help for Veterans with education and business loans, tuberculosis and general hospitals and clinics, housing through special financing. Private non-sectarian industry hires the handicapped and train them. Health programs and research for heart, cancer, arthritis are the concern of private agencies. Red Cross and the National Guard aid in disaster areas. A myriad of public and private agencies function through Community Chest arrangements to assist families with problems. What work the churches do is small percentage wise, and given along sectarian lines. Further it is contestable that private religious groups function more competently or perform

524. Robertson, op. cit., p. 155.

services more economically than non-sectarian government directed programs such as social security, etc.

For Special Privileges:

Since churches are non-profit organizations, they possess no net income and therefore no capacity to pay taxes.

For Disestablishment:

Churches are investing surplus funds, to such an extent that it has become an open scandal. CBS ran a survey on this question to determine how the public feels in relation to churches disclosing whether they are really non-profit organizations. The question asked was "Do you think religious institutions should be required to report all property and income." The General public replied 66% yes; Congress 65% yes and the Clergy 53%. To a second question, "Do you think that churches should be required to report their commercial property and income?" the percentage of replies was: general public, 77%; Congress, 94% and clergyman 91% yes.[525] The later figure indicates that the lower echelon clergy want to know what is going on in their churches too.

For Special Privileges:

Churches are good institutions and deserve to receive governmental support so that they can pursue their programs.

For Disestablishment:

Many beliefs and practices of one church are repugnant to other churches. There is a religious diversity of opinion now which splits our nation in respect to birth control, legalization of abortion, liberalizing divorce laws and tax support for parochial schools.

For Special Privileges:

This would be a double tax on individual church goers, on their personal income and once in taxes paid from church funds.

525. CBS report, op. cit., p. 6.

For Disestablishment:

All donations to churches from personal incomes are deductible from gross taxable income, so that no double taxation exists. Members of churches which would be taxed on real estate holdings would suffer no more than any other tax paying institution. The members of a church are responsible for the financial health of their church; this is not the responsibility of the general public or the government.

For Special Privileges:

The power to tax is the power to destroy.

For Disestablishment:

Not while there are 100 million church goers in America!

For Special Privileges:

The churches are the fountain of ethics and morality in our culture, and they should be encouraged.

For Disestablishment:

Churches have no monopoly on either ethics or morality. Other institutions in our culture also foster these values, notably the public school system. Further it is not the business of the state to raise its revenue only from the "baser elements" of the population. Our great scientists, inventors and educators are not exempt from taxation on the ground that they are doing good for the general population or that they are moral examples. We cannot tax private citizens in relation to their virtuous characteristics, or the lack thereof, and neither should we give tax relief to a religious institution upon this premise. The greatest institution in America, with the first imposed chore of building moral character, is not given exemption at all: the home.

For Special Privilege:

Exemptions have been with us, always. Every state in the union and the federal government grants them.

For Disestablishment:

The universality or the age of a custom has nothing to do with whether that custom is just. Segregation by race has been with us, always and still flourishes in many sections of America. We need a constant review of the assumptions underlying all our institutions as we mature as a culture, and we must guard basic rights against majoritarian control.

For Special Privilege:

Churches are divinely inspired and therefore immune from civil authority and taxation. Ezra 7:24 "We also notify you that it shall not be lawful to impose tribute, custom or toll upon any of the priests, the Levites, the singers, the doorkeepers, the temple servants, or other servants of this house of God."

For Disestablishment:

" 'It is lawful to pay taxes to Caesar, or not? Should we pay them or not?' . . . Jesus said to them, 'Render to Caesar the things that are Caesar's and to God the things that are God's' " Mark 12:14, 15, 17. Matthew 22:17, 21.

"When they came to Capernaum, the collectors of the half-shekel tax went up to Peter and said, 'Does not your teacher pay the tax?' He said, 'Yes' " Matthew 17:24.

"For the same reason you pay taxes, for the authorities are ministers of God, attending to this very thing. Pay all of them their dues, taxes to whom taxes are due, revenue to whom revenue is due . . ." Romans 13:6-7.

"And all went to be taxed, every one into his own city, And Joseph also went up from Galilee . . . to be taxed with Mary his espoused wife, being great with child." Luke 2:3, 4, 5.

For Special Privilege:

The Constitution guarantees there will be no laws "prohibiting the free exercise" of religion. Ending religious exemptions would hamper the free exercise of religion by church members.

For Disestablishment:

The Free Exercise clause of the First Amendment protects the rights to prayer, mass, sermons, sacrament and all practices of religious beliefs. Ad valorem tax is a non-discriminatory fee placed alike *on all who desire to hold land.* It is not aimed at either promotion or restriction of religious belief. The First Amendment also protects freedom of speech but does not relieve owners of printing houses from taxes upon their land. The First Amendment does not require a subsidy be given for "Free Exercise" of religion in the form of fiscal exemptions from taxes. Freedom from taxation is not a prerequisite attaching to the privilege.

For Special Privilege:

The state must protect the rights of the religious people.

For Disestablishment:

The term "religious people" is not synonymous with the term "church goer" in America. The state must also protect those who do not attend churches out of their own choice. Going to or staying away from church, or membership in a church, is a matter of private decision. The state can not burden the non-church goer with taxes in order to give relief to persons who desire to be 'churched.' Non-church goers are Hohfeldian complainants with personal and proprietary interest in the matter of reduced taxation. If they desired to contribute to the churches they could do this simply by attending churches or contributing to them. The discrimination here is against non church members. Government compulsion is used to extract higher property taxes. This is an indirect means of obtaining money from the general taxpayer which he would not of his own volition otherwise give.

For Special Privilege:

The church goer can not stand the extra burden of money required.

For Disestablishment:

The church goer will also have his tax reduced, and can give the money he saves to the church of his choice rather than having a larger benefit accrue to the biggest land holding church in his community. A tax on a church is not a tax on an individual so long as he is free to support or not support that church as he desires. That freedom is his in America. There is no prohibition as to where he directs his own money.

For Special Privilege:

If churches must be taxed, they should pay only for services received such as fire protection, mail service, police protection, traffic control, streets, streetlighting, connecting with water and sewerage outlets, assistance in times of natural catastrophies, protection in time of war, and not for health programs, city parks, etc. Government carries on various programs that some churches (and their members) find unconscionable, such as birth control measures. Why tax church goers against their conscience?

For Disestablishment:

The situation of all taxpayers is that some government services and activities which are supported by their tax funds go to the general welfare and not back to the specific taxpayer.

For Special Privilege:

Churches raise property values, bring people to the community and increase the local tax base resulting in lower taxes.

For Disestablishment:

A recent study by a Washington, D.C. attorney finds the churches in much litigation over zoning with property owners asking for churches to be excluded from their neighborhoods because the church buildings are undesirable incursions because of noise, mere inconvenience, depressiveness, violations of police, fire, health and sanitary regulations, disturbances of the

peace, bell ringing, increased traffic, parking problems, nuisance value[526]

For Special Privilege:

The repercussions of abolishing religious exemptions would redound against the Supreme Court, to a greater extent than the decision to remove Bible and prayer from public schools.

For Disestablishment:

The National Council of Churches reports that the influence of churches and the pressure they can exert might be less than may be assumed. As reported by them, for specific years, the percentages of persons feeling that religion is losing its influence are as follows:[527]

1957 . . . . . 14%
1962 . . . . . 31%
1965 . . . . . 45%
1967 . . . . . 57%

At a conference hosted by the Social Research Center of the Jesuit-run Gregorian University in Rome, Italy, two American Sociologists reported[528] that irreligion is on a steep rise in America and that it would be more evident if there was not so much active discrimination directed against non-believers.

In any event the Supreme Court has weathered other storms: Desegregation, One-Man-One-Vote.

For Special Privileges:

Churches are above the law: this is religion.

For Disestablishment:

In America we begin with the premise of equal rights to all men and women. The claim of religion is of a superior right

526. Curry, James E. *Public Regulation of the Religious Use of the Land,* Charlottesville, Va., Michie Co., 1964.

527. Whitman, op. cit., p. 229.

528. Associated Press, August 20, 1969.

because of certain ideas the religious person holds. They ask to be free of the ordinary burdens of society at the expense of those who support the society generally.

There are 256 brands of religion in America, all claiming to be the "one true faith." These 'religions' include godless, prayerless, heaven-less groups of all nature from Buddhists, Taoists, Ethical Culturists, Humanists, to those espousing some vague Weltanschauung. Religion is merely set apart from government, not above it. Each religion has full liberty to spread respective doctrines, at its own cost. Whether one or any particular or all religions thrive or decline is none of the business of the state. All the state can do is to give a free field to all, and then let them succeed or fail in proportion to their own merits and their ability to convince men and women of their truth and of the merits of their claim to monetary support at the hands of the individuals thus convinced. No amount of sophistry can disguise the fact that church is primarily a doctrinal organization and among the Christian sects there is no clear and compelling support to the claims of any to be above the law.

> Benjamin Franklin: "When a religion is good, I conceive it will support itself; and when it does not support itself, and God does not take care to support it so that its professors are obliged to call for help of the civil power, tis a sign, I apprehend, of its being a bad one."[529]

For Special Privilege:

A tax exemption is only an indirect subsidy, any benefit to religion is merely incidental to the 'public purpose' which religion promotes. Remember that this 'public purpose' is the support which the church gives to the state. As noted by New Hampshire in its Constitution,[530] religion

> "will lay in the hearts of men, the strongest obligations to due subjection."

---

529. Franklin, Benjamin, *Works*, Vol. XVII, p. 506.

530. Pt. I, Art. 6th.

which the state also requires of its citizens. Religion should be supported as an ally of state in teaching this through religious doctrines.

For Disestablishment:

In our times, people understand the necessity of a good government and the benefits to all which are derived from the support thereof. The American people are not so unsophisticated that they need be kept in fear or educated to "due subjection." The government does not need the church to be its 'press gang.'

For Special Privilege:

The tax exemption is only an indirect subsidy and is not a breach of separation.

CONCLUSION

For Disestablishment:

There is no secular legislative purpose in any of the Constitutions or Statutes of any of the United States. The primary effect of the law is to advance religion. The exemption is a classification solely in terms of religion with a primary effect of the laws being to advance religion. The classification exempts only those activities which are religious, exempts only those properties with a religious alliance, always in a sectarian fashion. The government can not thus go into the business of religion doing indirectly that which is forbidden directly.

In the instant case there are four sections of the New York Real Property Laws which are violative of the First Amendment to the Constitution of the United States:

> Section 420, sub. 1: Real property owned by a corporation or association organized exclusively for . . . religious . . . purposes . . . and used exclusively for carrying out

thereupon one or more of such purposes . . . shall be exempt from taxation as provided in this section.

Sec. 426. Real property held by any officer of a religious denomination shall be entitled to same exemption from taxation . . . as property owned by a religious corporation.

Sec. 460. Real property owned by a minister of the gospel, priest or rabbi, an actual resident of this state, who is engaged in work assigned to him by the church, or who is unable to perform such work due to impaired health, or is over 70, shall be exempt from taxation to the extent of $1,500.

Sec. 462 ". . . property owned by a religious corporation while actually used by the officiating clergyman thereof for residential purposes shall be exempt from taxation.

The order of the Court of Appeals of the State of New York should be reversed.

Respectfully submitted,

MADALYN MURRAY O'HAIR
P. O. Box 2117
Austin, Texas 78767
Attorney for O'Hair, Amicus Curiae, pro se.

LOLA BOSWELL
1010 Vermont Avenue
Washington, D.C. 20005

JAMES H. ANDERSON, JR.
2204 Eutaw Street
Baltimore, Maryland 21217
Attorney for Society of Separationist, Inc., Amicus Curiae.

24 September 1969.

APPENDIX TO BRIEF

The following articles are of interest in reviewing the subject at issue:

Albright, Byrne C., and Griffin, Joyce, "Taxation – Constitutionality and Controversy," 37 Notre Dame Lawyer 660, Aug., 1962

Bailey, Clark and McCartan, "Taxation – Unresolved Issue," 35 Notre Dame Lawyer, 423, May, 1958.

Baker, "Tax Exemption Statutes," 7 Texas Law Rev. 59 (1928).

Brancata, John R. "Characterization in Religious Property Tax-Exemption: What is Religion? – A Survey and a Proposed Definition and Approach," 44 Notre Dame Layer, 1960, Oct. 1968.

Cohen, Lawrence P., "Constitutionality of Tax Exemptions Accorded American Church Property," 30 Albany Law Review 58, Jan. 1966.

Comment – "Charitable Contributions Under the Internal Revenue Act of 1964," 19 University of Miami Law Review 283 (1964).

Gerardo, Kennedy and Schierl, "Taxation – A Cultural Quid Pro Quo," 35 Notre Dame Lawyer, 419, May, 1960.

Gray, John, "Gifts for a Non-Charitable Purpose," XV Harvard Law Review 510, March 1902.

Hannan, William E., "Property Exempt from Taxation in the Forty Eight States," State University of New York, Bulletin No. 638, May, 1917.

Hendelman, Allen, "Tax Exemption of Religion and Its Related Activities," Church-State Seminar, University of Texas, 1966.

Hunter, "Tax Exemption – A Subsidy," 8 Tax Mag. 332 (1930).

Hurvich, Fred A., "Religion and the Taxing Power," 35 University of Cincinnati Law Review 531, (1966).

Killough, "Exemptions to Educational, Philanthropic and Religious Organizations," Tax Policy League, Tax Exemptions 23.

Korbel, "Do the Federal Income Tax Laws Involve an 'Establishment of Religion?' ", 53 American Bar Association Journal 1018 (1967).

Lachronon, "The Low Cost of Charity," 26 Taxes 151 (1948).

Lanning, Geoffrey, J., "Tax Erosion and the 'Bootstrap Sale' of a Business – I," University of Pennslyvania Law Review, March, 1960, pp. 623-696.

Moore and Dohan, "Sales, Churches and Monkeyshines" 11 Tax Law Review 87, (1956).

Note–"Constitutionality of Tax Benefits Accorded Religion," 49 Columbia Law Review 968. Nov., 1949.

Note–"Exemption from Taxation of Residences Owned by Charitable, Religious and Educational Institutions in Ohio," 14 Western Reserve Law Review 549 (1963).

Note–"Exemption of Educational, Philanthropic and Religious Institutions from State Real Property Tax," 64 Harvard Law Review, 289 (1950).

Note–"The First Amendment and Financial Aid to Religion: Limits on the Government's Conduct," 61 Northwestern University Law Review 777 (1966).

Note–"Taxation-Exemption of Charitable, Religious and Educational Institutions from Property Taxes," 12 Drake Law Review 87, Dec. 1962.

Note–"Taxation of Church Property," CCLXIII New Englander and Yale Review 177, Feb. 1892.

Note–"Taxation of Religious Organizations – Benefits Granted by Federal and State Governments," 5 Villanova Law Review 255, (1960).

Paulsen, Monrad G., "Preferment of Religious Institutions in Tax and Labor Legislation," 14 Law and Contemporary Problems 144, Winter, 1949.

Paulsen, Monrad G., "State Constitutions, State Courts and First Amendment Freedoms," 4 Vanderbilt 620, April, 1951.

Pfeffer, Leo, "Church and State: Something Less Than Separation," 19 University of Chicago Law Review 1, Autumn, 1951.

Religious Institutions and Values: A Legal Survey, 33 Notre Dame Lawyer 416 (1958).

Religious Institutions and Values: A Legal Survey, 35 Notre Dame Lawyer 405 (1960).

Religious Institutions and Values: A Legal Survey, 37 Notre Dame Lawyer 649 (1962).

Religious Institutions and Values: A Legal Survey, 39 Notre Dame Lawyer 427 (1964).

Religious Institutions and Values: A Legal Survey, 41 Notre Dame Lawyer 681 (1966).

Religious Institutions and Values: A Legal Survey, 43 Notre Dame Lawyer 684 (1968).

Stimson, Claude W., "The Exemption of Churches from Taxation," 13 Taxes 361 (1940).

Stimson, Claude W. "The Exemption of Property from Taxation in the United States," 18 Minnesota Law Review 411, March, 1934.

Symposium – "The First Amendment and Financial Aid to Religion: Limits on the Government's Conduct," 61 North Western University Law Review 77, (1962).

Tanner, James C., "Many Religious Groups Reap Tax-Free Profits in Commercial Ventures," The Wall Street Journal, Oct. 29, 1963.

Tapscott, Clarence B., "Taxation–Exemption of Church Property," XV Oregon Law Review 152, Feb., 1936.

Torpey, William G., "The Exemption of Church Property from Taxation: Judicial Doctrines of Religious Rights in America," University of North Carolina Press, 1948.

Transcript of Proceedings, Pennsylvania Conference on Church and State, sponsored by the University of Pennsylvania, Law School, October 13-14, 1965.

Van Alstyne, Arvo, "Tax Exemption of Church Property," 20 Ohio State Law Journal 461, Summer, 1959.

Wolder, "Income and Real Estate Tax Exemption Problems of Churches and Associations," 45 Taxes 613 (1967).

Zollman, Carl, "Tax Exemptions of American Church Property," XIV Michigan Law Review 646, June, 1916.

No. 135

Opposition to Motion of Madalyn Murray O'Hair for leave to file brief, as amici curiae, as to O'Hair's filed on Sept. 25, 1969

(not printed)